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### TRIAL OF MR. STUART.

—161—

#### Late Fatal Duel.

##### TRIAL AND ACQUITTAL OF MR. STUART.

It is in the day of trial only that a man knows himself and his friends. His fortune must be great who at once defeats the machinations of his deadly enemies, and proves the invincible attachment of his friends. His worth must be greater who has merited, and is allowed by all to merit such good fortune. And there is nothing left to desire when the triumph of the individual is the triumph of the public.—*ANONYMOUS.*

*Scotsman, Saturday, June 13, 1822.*

The result and consequences of this trial must, on all good minds operate like a charm. It has proved that there are honorable men at both sides; that there is justice in our Courts; that Juries can be honest, and the Bench impartial. No one doubted that Mr. STUART would be acquitted. The wrongs were all his. As his senior Counsel observed, he was to be considered not as a person guilty of a great crime, but as one who had fallen under a great calamity. But when it is taken into account that the jurors were almost to a man the political opponents of Mr. Stuart, and that the party who had fallen was of some rank, and of considerable consequence to the side in power, the manner of the acquittal will be allowed to have been exceedingly handsome. We could have cried with pleasure, when, without leaving the box, the Jury, in one voice, and with no longer pause than was sufficient to mark deliberation, returned a verdict of *Not Guilty*. This was exactly the consummation prayed for by Mr. STUART's friends. And nothing could shew more decisively that the sentiment of honour, in its best form, was operative in the minds of both Judges and Jury. The charge of the Lord Justice-Clerk, delivered after seventeen hours of anxious attention, and when nature could hardly be supposed able to sustain his Lordship, was admirable and judge-like in every respect. With the very best taste his Lordship stated those parts of the law which bore hardest on the arraigned party, from our institutional writers, taking care, however, to mark the relaxation which had taken place in practice. But although his calmness never forsook him, yet in stating the injuries done to Mr. Stuart,—the provocation given—the mild and easy terms offered for an adjustment—the temperate, passionless and gentleman-like conduct of the party seeking redress in all that preceded the meeting,—his fair and honourable conduct in the field,—his manly firmness,—while his impression was that he might or rather would be the sufferer,—his generous sorrow when the event turned out otherwise,—the great and unparalleled weight of testimony as to the evenness and safeness of his temper—the usefulness of his life—the worth of his character, and the wrongs which such a man had sustained from the Government press,—his Lordship displayed as much feeling as could becomingly be restrained, and, without forgetting the Judge, disclosed and owned the man. We can say here—and we can bestow no higher praise—that the charge met, and was adapted to the peculiar circumstances of the case—that it was admired by all who heard it—that it will receive the approbation of the country at large, and this, we conceive, is by far the best way of supporting the dignity of the Court. Petitions and complaints, sentences and imprisonments may be thought necessary; but their general tendency is to excite distrust, and,

even when justified on sound principles, which can rarely be the case, they generate no love, and, as to respect, there is more of it produced by one instance of generous and magnanimous justice, than by a thousand vindictive inflictions. We have heard of Judges, (the Justice-Clerk is not one of them) who took part in all the political and irritating contests of their neighbourhood, as if the judicial name and authority were expected to bear down all opposition, and who, deriding public opinion, could at any time sacrifice a community to their own personal feeling; but no line of conduct could more effectually lower the judicial character or more speedily bring the law itself into disesteem. Since experience shews the difficulty of keeping the intellect free of all taint from the passions, it is hazardous in any one, whose mind ought to be calm and impartial, to seek occasions which must necessarily stir the feelings. Nay, although there should be a consciousness of strength to carry him through the ordeal, a Judge should out of deference to public opinion, avoid all such dangerous experiments. Opinion may be disregarded or trampled on in a particular case; but it is, after all, stronger than any one individual—higher than any other human authority. Without pretending to power, it makes and unmakes laws at pleasure; and ultimately it is the great arbiter of character—rescuing from oblivion, elevating to honour, conferring renown, consigning to execration. Whatever be the aberrations of individual minds, the mass of intellect is continually aspiring after something greater and better. There is also a constant approximation on the whole to the soundest opinions; and the art of printing, which is indestructible, insures a certain and beneficial progress. Believing, therefore, that the opinion of enlightened and good men will yet, in all cases, be the prevalent and abiding opinion, and that it is essentially a *vox Dei*, we must feel pity for those who can disregard or despise it.

There can now be, and there is, but one opinion among all persons, either here or elsewhere, respecting the character of Mr. STUART. His honour, probity, and disinterestedness, the placidity of his temper, and unshrinking courage, are made obvious to all. But what, then, shall we say of the conduct of the managers of the Government press of this city and of Glasgow—at least of that part of it avowedly patronized by the Lord Advocate and his minions? Mr. STUART was no stranger to them. They lived in the same city with him; and his worth and usefulness were as thoroughly known to them as they are now known to the public; and yet these very persons, with a degree of satanic malignity to which it is in vain to seek a parallel, have, for these many months past, made him the object of ceaseless and roffian attacks. Every body now sees what Mr. STUART really is; and contrasting his character with the atrocious libels written against him, it is difficult to conceive, that they could have proceeded from any other motive than an inherent and natural antipathy to whatever was excellent! Can this infamous system of secret calumny and slander be supported, after the complete and signal exposure that has now been made? Is the Government of this part of the country still to be entrusted to those who have openly patronized the base and lurking assassins of reputation and of character? We are no admirers of Lords LIVERPOOL and LONDONDERRY, but it would be doing them

great injustice to suppose them capable of countenancing or approving such scandalous proceedings; and the generous and manly conduct displayed by so many gentlemen opposed to Mr. STUART in politics, on the late trial, convince us that the patrons of the BEACONS, SENTINELS, and BLACKWOODS, are as much despised by the gentlemen of the Tory party, as they are loathed and detested by the public.

But while the event of this trial, and the exposure that has been made, is consoling and gratulatory, what a lesson, at the same time, does it afford! On what a hair-breadth did all the good which has arisen depend! So little was Mr. STUART accustomed to the use of his weapon, that, had he taken an aim, there was almost a certainty of his missing; and if the shot on the other side had taken effect, what would have become of that evidence as to character, constancy, &c. which has done so much for the ends of justice! A doubt at least might have hung round Mr. STUART's memory. But "there is a special Providence even in the fall of a sparrow;" and if the finger of Providence has ever been seen in human events, it is visible here. We do not wish to rake up the ashes of the dead; but it would be a false generosity if, from tenderness in that quarter, we should refrain from doing justice to the living. The deceased party shewed, by his own conduct, that he was going on in a course of writing which, in all probability, would lead to messages; and his letter to Mr. MACONCHIE proves that he, at one time, intended firing at Mr. STUART. All this, however, does not exclude the possibility of better feelings having prevailed as the hour of actual trial approached nearer; but Mr. STUART certainly had reason to think, that the man who had shot poisoned arrows at his character and honour, would not hesitate to take away, what was of infinitely less value, *his life*; and the cause of his going out at all rendered it indispensable that he should himself fire in the usual manner. His antagonist had put him under this terrible necessity; and if in such a case one is to fall, who does not wish it should be the aggressor?

It has been said, we know, in extenuation of Sir ALEXANDER BOSWELL's conduct, that Mr. STUART's activity as a politician had provoked attack. We say, on the contrary, that this was an aggravation. If there was no personal pique—and we know not how there could be any against Mr. STUART—it was doubly wrong to have recourse to insult merely on account of his political principles. When the human mind is not fettered, there must be differences of opinion respecting the propriety and tendency of public measures. It is no free country where the grounds of difference cannot be stated and enforced; and as every sincere man must be equally convinced that he is right, each has an equal title to protection. It is, no doubt, an essential part of that freedom for which we contend, and which must be enjoyed by all but the vilest of slaves, that every one may discuss the avowed opinions and public conduct of every other. All that may be done, and is done daily, without a word or expression escaping at which any person has right to take offence. He who states a silly argument in support of a bad measure, or who acts corruptly or oppressively in a public capacity, may and ought to have the silly argument, the bad measure, the corrupt or oppressive proceedings, dragged into light, exposed, and condemned. It is the cheapest way in which abuses can be corrected, or evils prevented. But there the privilege stops. No man is entitled, on account either of differences or errors of opinion, or of any thing done, whether wisely or foolishly, in the exercise of a public right, to insult another—to comment on peculiarities or defects of person or manner—or to apply to him opprobrious and ungentleman-like epithets. When that is done, every honourable feeling is outraged, the sanctities of private life are violated, the peace of the community is broken, and discord, in all his frightful shapes, is let loose upon society. The Tories, unquestionably, are as much entitled as the Whigs to publish their own sentiments, and examine those of their opponents. But no junto, even of ultras, are entitled to act as if the infallibility of Jove were theirs, and his thunders at their disposal. They cannot legitimately, pro-

scribe all who differ from them in opinion. And yet what has been the conduct of a knot of place-hunting ultras of Edinburgh, embracing, unfortunately for the law and the country, the Crown Lawyers of Scotland—since the era of the Chaldee Manuscript? That tissue of malignant and bitter libels was not a solitary production. It was followed by a series of others still more vulgar and brutal, if not so pungent; and the author of some of the worst of these libels now occupies the Chair of Dugald Stewart and Dr. Thomson Brown! A writer for the same publication—and one who is said to have written much for the Beacon—is now Solicitor or Secretary to a Government Board. And his Majesty's Advocate, the great conservator of the peace, has patronized in turn the BEACON, the SENTINEL, and the CORRESPONDENT; all of which seemed to make libelling a trade, and whose leading principle appeared to be that every political opponent must be put down either by vilification, or by lead from the muzzle of a pistol. It was the boast of the Beacon that it had somebody ready to shoot every one traduced in its columns! The SENTINEL, it seems, had its fighting-man also, though he trusted no doubt to its obscurity and apparent poverty, and did not couple even to disguise his hand, and enjoy the destruction of his manuscripts. We said *apparent* poverty; for the SENTINEL, like the BEACON, had its bondsmen and patrons among the ultra magnates of the west! But in leaving it to another to pourtray their infamy in stronger colours, and with a more powerful hand, we can assure the public that the full disclosure of the affairs and machinery of the BEACON, SENTINEL, and CORRESPONDENT, will speedily be made. It is impossible now for Lords, Baronets, Procurators, Knights, and Esquires, Writers, or Solicitors, to prevent it; and persons in all these grades will appear grouped and shaded in a becoming manner. But at present we must content ourselves with a remark or two on their practices. We have said already that their grand object was to assassinate character—to degrade their opponents by insults heaped upon them by persons not to be acknowledged as gentleman—or, if the veil should be uplifted, to take their chance—which they held out themselves to be something like a certainty—of taking away life. To this system poor Scott fell a victim in London; but instead of teaching moderation, that melancholy event (which one would think they considered fortunate) seemed to act only as an incitement to farther aggression. It had that effect, beyond all doubt, on the conductors of the BEACON; for many of their worst attacks followed the death of Mr. Scott. Those upon Mr. Stuart were incessant, and for bitterness and malignity almost inhuman. How, then, could Mr. Stuart acknowledge the person who printed these libels *for gain* as his equal? For ourselves, we honor the rank and family only when they stimulate to honourable actions, and, lest a name should be sullied, restrain from bad ones; but, upon their own principles, those who made themselves most busy in heaping insults upon Mr. Stuart, should have seen that the blood in his veins, and his connections with high rank and ancient families, were enough to bear him up in refusing to put himself on a level, not only with his own defamer, but with a traducer in ribaldry and vilification. Mr. Stevenson affected to dislike coarse and malignant libels, but he went on printing them for gain; and he was among the earliest patrons of the SENTINEL. But Mr. Stuart, being the intrepid advocate of independence and liberal principles, was to have no quarter. His feelings were lacerated—his honour assailed from day to day, and, to sink him irrecoverably, this was done *as sensibly* by persons much lower than the original Printer of the BEACON. We have no desire here of again dragging those before the public who meanly and unworthily contrived to give additional poignancy to the attacks of the Ministerial press. Among them, Mr. STUART's life was, as they wished, rendered so intolerable, that it is impossible for any man to hold that he acted otherwise than in self defence. With a spirit like his, he must either have died himself, or taken the risk of killing Sir ALEXANDER BOSWELL. But his persecutors, we believe, did not so ardently desire what has resulted from their proceedings. From those who were continually deploring the prevalence of blasphemy and irreligion,



we expect nothing on the score of principle. With them, it is all cant and imposture; but as they now perceive that the aggressor *may* have the worst, even at the hands of an unpractised person, something is to be hoped from prudence. Our main reliance, however, is placed upon the returning good sense of the better part of the Tories. As we observed, at the outset, they have now shewn that they are not without honour and principle. Such men, if they have countenanced the recent or still existing manufactories of abuse, must have been deluded for a time; but we are now persuaded that all the artifices that can be played off against them, will not be able to continue the delusion. The originators of the system may and do still talk of the licence taken in the age of Queen ANNE,—in what are called the best days of English literature; but mystify as they will, the charm is broken. The errors or vices of other times afford no justification of those of the present. Personalities of a certain kind might then, from the manners of the age, be held as venial or ridiculous. It might then be the fashion to answer them in a similar style. From their want of currency they might be considered innoxious; or, what proceeded solely from personal dislike, founded on conduct of which we have no means of judging, in particular cases, may be represented as a general practice. But supposing our better manners to have arisen solely from greater refinement—from an improved taste, are they who would make us recur to old habits of a criminal nature, any better than the perpetrators of new crimes? It must always be a serious offence to wound the feelings by reference to what is private and personal, and set the hand of every man against the heart or head of his neighbour. The system which, if persevered in, must deluge a country with blood, is criminal in all ages; and let those implicated colour as they will, the Patrons of the BEACON and SENTINEL patronize a system of blood and crime. It is a system, however, which cannot last, and, sooner or later, the Tories themselves—we mean the better part of them, which we trust after all is the more numerous, will unite with us in putting it down, even although they should cast reproach upon a set of provincial Crown Counsel. Honour and principle have been acknowledged in our Justiciary Court. They must, therefore, though reluctantly, be speedily acknowledged even by those who for some time perhaps have forgotten them. We perceive an earnest of much good in what took place in that Court on Monday and Tuesday last; and while it proves that all are pure and impartial there at present, it also points out this as the proper time for effecting reform. Had the presiding Judge been disposed to select a jury of shopkeepers, for the purpose of influencing them by a charge of a very opposite description, what might have been the consequence to Mr. Stuart—what the disappointment to the country! The public feeling was wrought up to the highest pitch.—The avenues to the Court were crowded from four o'clock in the morning of Monday until after the same hour on the morning of Tuesday. The anxiety of those who could not gain admission to the Court-house was extreme. About one o'clock on Tuesday morning, a rumour was circulated that the arraigned party was acquitted; and it was followed by the most deafening shouts of "Stuart for ever." These were repeated so loud without, that for some time not a word that Mr. Jeffrey said was heard within; and to Mr. S. and his friends this occasioned feelings of the most painful nature. Nothing improper was intended. It was the manifestation merely of a momentary irresistible feeling; but fears were entertained that the Jury might misconstrue what was passing as an attempt to concuss them. The shouts—which subsided as soon as it was known that the rumour was premature, were repeated in Court even at the moment of acquittal—and re-echoed and continued without. An attempt was also made to draw Mr. Stuart and his Counsel home; but his friends practised a ruse in his favour. After all, he was recognised and greeted on his honourable acquittal; and it was with much difficulty that those who followed him to Charlotte-Square were prevented from doing more than waving their hats in silence. This was done in compliment to Mrs. Stuart.

# HIGH COURT OF JUSTICIARY.

After all the remarks in our Leading Article, our account of the proceedings in the Justiciary Court cannot be fully appreciated without a preface. It will consist, however, not of discussion, but of a statement of facts.

While proprietor of THE CLYDESDALE JOURNAL, a newspaper published in Hamilton, Mr. Borthwick took into partnership with him a Mr. Alexander. Almost immediately after this the name of the publication was changed to that of THE GLASGOW SENTINEL and not long afterwards Borthwick agreed, on certain conditions, to give up the property of the paper to Alexander. The latter, however, did not fulfil the conditions, in consequence of which the former gave in a petition to the Magistrates of Glasgow, praying to have it found that "*he had never ceased to be a partner, and that he was entitled to resume possession of the property.*" A litigation ensued; but, in February last, the Magistrates found and decreed in terms of the prayer of Borthwick's petition; and their interlocutor was allowed to become final. On 1st March, accordingly, Borthwick resumed possession, remained in the printing office during the whole day, and in the evening when he left it, he locked up the papers in the safe, taking the key in his pocket. To this resumption of possession, and these proceedings, Alexander made no resistance; but he went to Hamilton, got hold of an old caption (warrant of imprisonment) on a debt, which has since been admitted not to have been due, and, on this caption, had Borthwick apprehended during the night, and thrown into jail next morning. The keys were then asked from Mr. Borthwick, but he refused to give them up, insisting that the keys, the safe, and every thing in it, were his property. Alexander then took it upon himself to have the safe broken open, and a new lock and key put upon it, while Borthwick was kept in jail till he could procure means for paying a debt which was not due. These circumstances having been explained, the country agent of Borthwick, who saw that there was no ultimate risk, found means to raise the money, and procured Borthwick's liberation. Mr. Stuart, we think, might, without impropriety, have advanced the money in this instance; but though he did not do so, he was anxious to discover the real authors of the libels on himself that had appeared in the SENTINEL. Even for that object, however, he would come under no obligation to Mr. Borthwick. With the hope that legal proceedings might lead to some disclosure, Mr. Stuart had raised an action of damages against Borthwick and Alexander, and the former, who had wished to get out of the concern, was still more anxious to get rid of the action for damages; but though applied to by his country agent, with whom he had no previous acquaintance, Mr. Stuart said, that the giving up of the action must depend upon circumstances; avowing, however, that disclosure, and no money, had been his object from the beginning. To obtain such information as was to be got promptly, Mr. Stuart accompanied Borthwick's town and country agents to Glasgow; but the papers which he saw and obtained was through them, and upon his receipt in the most regular and business-like manner. What was done in the SENTINEL office he knew only from the evidence of others; but on that evidence, which was unquestionable, he learned that Borthwick, on his liberation by and through his own agents, had, on the morning of 11th March (Monday), continued the possession which, in law, could not be held as having been interrupted by the illegal imprisonment at the instance or instigation of his copartner; and finding the new key in an open desk, he locked the safe, and took such papers as he thought might answer the purpose of quashing the action. These papers were delivered by him into the hands of his law-agents, and through them, as already mentioned, Mr. Stuart obtained the necessary inspection. On the day upon which this happened, Alexander, who had hitherto left unchallenged the final judgment of the Magistrates of Glasgow, which found the partnership to be still in force, made an application, with concurrence of the Procurator-Fiscal, to the Magistrates of Glasgow, charging Mr. Borthwick with theft. Under the application Mr. B. was examined, emitted a full declaration of all the circumstances, and was dismissed by the Magistrates, who, holding the charge to be unfounded, did not think it proper even to put Borthwick under any sort of bail.

On 18th March, to see what could be done for the ends of Justice, Mr. Stuart was himself called upon to undergo an examination before the Sheriff depute of Edinburgh, not as a party, but as a witness; and we understood from some friends at the time, that Mr. Stuart explained frankly what he had ascertained respecting the SENTINEL,—such as, that it was carried on upon an organised system by the persons opposed to Lord Archibald Hamilton in the west,—that in the east it was patronised by persons in office, such as Mr. M'Niell and Mr. Dundas of Arniston, Advocates'-depute, Mr. Arch. Scott, Procurator-fiscal, Mr. Hepburn of the Stamp-Office, and Mr. John Russell, W.S.;—that Mr. William Blackwood and Mr. Duncan Stevenson had written letters, congratulating the editor on the first number;—and that Dr. Stoddart of the New Times, and the JOHN BULL of London, were also patrons. But our information is erroneous if any thing transpired to encourage any party

whatsoever in taking subsequent proceedings against Borthwick. Subsequent proceedings, however, were resorted to, both in the civil and criminal courts. Messrs Linning and Niven got a bill of advocacy presented to the Court of Session against the final (but, unfortunately, unextracted) decree of the Magistrates of Glasgow. On 26th March, the duel, which gave rise to Mr. Stuart's trial, was fought; and thereupon Mr. John Hope, in the absence of the Lord Advocate, presented a petition in his Lordship's name to the Court of Justiciary charging Mr. Borthwick with a capital crime, for the same alleged offence which the Magistrates of Glasgow had previously disregarded, a warrant having been obtained on the petition got up by Mr. Hope. Borthwick was taken prisoner in Dundee, — brought to Edinburgh in irons, — imprisoned in a felon's cell, admittance to which was refused to his agent, and he was indicted to stand trial before the Circuit Court at Glasgow. A petition was given in that Borthwick should be admitted to bail, and the proceedings before the Magistrates of Glasgow were founded on; but Mr. Hope answered, that such proceedings could have no influence in tying up the hands of the Lord Advocate, — that the crime was capital, and that bail could not be received. The legal argument was conclusive. The petition for bail was refused. Mr. Borthwick made expensive preparations for his trial; but when the day arrived, Mr. Hope stated that he could not then proceed, — that Borthwick must be imprisoned on a new warrant; but that he Mr. Hope, was willing now to take the most moderate bail. Borthwick, by the advice of his counsel, refused to give bail at all, on the ground that if he did so, he might be opposed in taking the steps necessary for forcing on his trial. He was, therefore, re-committed to prison, where (that he might be fully aware of his situation), he was confined in a felon's cell, in the company of felons, and with no allowance beyond a felon's fare. Notwithstanding all this, the Lord Advocate did not think proper again to indict Mr. Borthwick; but criminal letters were raised in name of Alexander, with the concurrence of his Majesty's Advocate; and on these letters he was indicted to stand trial on the 4th of June. On that day, as his letters were run, he applied for liberation under the act 1701, and obtained it; but, on the same day a new warrant was granted at the instant of Alexander, and he was re-committed to prison. On 6th June he was brought to Edinburgh, in custody to stand trial on the 10th; but the trial was put off to make way for Mr. Stuart's. On 12th June, notice was given by Mr. Linning's partner that Alexander was not to proceed farther against Borthwick, and that the warrant was withdrawn. And judicial proceedings against him being now at an end, Mr. Borthwick was set at liberty. If such things may be done there is not a man in this country who does not hold his liberty by the mere tolerance of the Lord Advocate and his deputy. But the whole matter, we are confident, must be investigated by Parliament.

On the day after the duel was fought, verbal notice was given to the Sheriff that Mr. Stuart would appear to stand trial when called upon. This resolution was announced in the STAR and ADVERTISER newspapers of the 29th March, being the third day after the duel. On the same day a similar written notice was made to the Crown Agent; and that notice was repeated on 4th April. On 6th April the Crown Agent communicated a copy of a letter from the Solicitor General, in which it is announced that Mr. Stuart is not to be tried until he is in custody, — that this was the usual practice, from which there was no reason for departing in Mr. Stuart's case; and that an indictment was never served until "the criminal" was examined, except when it was understood that he did not mean to appear. Against this course verbal and written remonstrances were made. It was stated (15th April), that the practice of England was to indict instantly, whether the party was in custody or not; that the practice in Scotland, in the few cases that had occurred, was even more favourable; that in some cases, particularly of Macdonell of Glengary, the party was indicted without being in custody; in others, such as Lient. Grant, and Captain Maclean, the parties had never been either imprisoned or tried. It was trusted, therefore, that Mr. Stuart would instantly be indicted, the strongest assurances being given that he would appear, that his friends merely wished to save him from a distressing imprisonment, and that nothing but the fullest investigation could satisfy his own feelings. On 22d April it was intimated that the Lord Advocate had given orders, that Mr. Stuart should be immediately indicted, and for the trial being proceeded with, but that it could not take place before the 27th of May. A subsequent intimation was given, that it could not proceed before the 3d of June, and then that it must be delayed to the 10th instant. But, in answer to a question put by Mr. Abercromby in his place in the House of Commons, the Lord Advocate gave an assurance that the trial would proceed on the 10th. All this was harassing enough to Mr. Stuart and his friends. Nor were they relieved by the terms of the indictment, which was drawn up in the most offensive terms possible. The arraigned party was called simply "James Stuart, Clerk to the Signet," his proper designation, "younger of Dundear," which fixed his character as a landed gentleman, being left out. Contrary to practice, also, Mr. Stuart was charged with having, from malice against the deceased, gone to Glasgow, and been there accessory

to the taking of papers illegally from a third party, the whole of which statement was disproved on the trial, and part of the indictment was struck out by the judges. The indictment also charged Mr. Stuart of fleeing from justice through a consciousness of guilt, although the Crown Counsel knew from the beginning that this was not the fact, Mr. Stuart being always ready to appear, and having intimated all his motions in France to the British Ambassador there. It was stated, but erroneously, that this had been the practice. There are only three similar cases to be found within the last fifty years; and no such charge was made in any of the indictments which followed. In particular, no such charge was made in the case of Glengary. It should also be mentioned, that the most unfavourable reports were industriously circulated as to the part which Mr. Stuart had taken in procuring the manuscripts; and much trouble was taken to represent him as a man of low connections, although he is descended from and connected with some of the principal families of the kingdom. His indictment run of course, in name of the Lord Advocate, and was subscribed by Mr. Duncan Macneil. Looking back to the connection which these gentlemen had with the BEACON, the cause of the whole that had happened, — to say nothing of any protraction of the SENTINEL, — the public will judge whether the public prosecutor appeared here in an enviable situation. There are who thought it impossible that a BEACON bondsman could conduct the prosecution.

There is just one other preliminary subject to be noticed. Mr. Spalding, the town agent of Borthwick, was precognosced in Edinburgh and compelled to lodge with the Sheriff, the writings obtained in the SENTINEL Office belonging to his client. These papers were considered of importance to the defence of Mr. Stuart; and his Counsel, in the beginning of June, presented a petition to the Lords of Justiciary, stating the facts, and craving a warrant for recovering the documents in question. Answers, subscribed by Mr. Macneil, were put in for the Lord Advocate, stating, that Messrs. Linning and Niven might have good reasons for refusing delivery of the process before the Magistrates of Glasgow, — that some of the writings called for were to be produced for the Crown, — that, as informed, the other papers belonging in property to Mr. Alexander, were irregularly carried away, and that not even a "tacit consent" could be given "to a proceeding which, under pretence of wishing to prove that certain documents are of a certain handwriting, is to give a party access to documents which otherwise he has no right to see, and on which ulterior proceedings may be found." The court, however, granted the warrant; and under it Mr. Sheriff Duff deposed, that, on a petition to himself in the name of the Lord Advocate, he had delivered up the papers, lodged with him by Mr. Spalding, to the Crown Agent. The Crown Agent (Mr. Rolland) deposed, in answer to interrogations respecting particular papers, "That he has not these papers, and that he does not know where they are. Depones, That he cannot say but that they might have been in his possession." That the whole of the papers got up from the Sheriff, "were delivered over by him to Mr. Anderson, clerk of justiciary, and to Rob. Wm. Niven, agent for Alexander," adding, "it may be possible he may have returned some of the papers to Mr. John Hope, Deputy-Advocate." Mr. Niven swore that he had got the recognition and a box of papers from Mr. Rolland, and promised to look over the latter for the papers called for. Mr. John Hope, (who was prevented by indisposition from attending the trial,) stated he would look through the papers in his possession and he afterwards produced the letter signed "Mark Tod" as the only one of those called for in his possession. The letter to Mr. Macnochie was produced, on oath, by Mr. Balfour of Whittinghame. And, with the documents thus recovered with so much trouble, Mr. Stuart's counsel proceeded with his defence, in which it is stated that he is a landed gentleman, and that "if tried by his Peers he cannot be found guilty of any crime."

On Monday last the trial of James Stuart, Esq. younger of Dundear came on before this Court. At ten o'clock Mr. Stuart entered the Court, and took his place at the Bar, accompanied by the Earl of Moray, Mr. Erskine of Cardross, and his Son Captain Gordon of the Royal Navy, Honourable Admiral Fleming, Elphinstone, Mr. Ferguson of Reith, the Honourable Mr. Fox, son of Lord Holland, &c.

Their Lordships were all present except Lord Meadowbank; and on the bench we observed the young Polish Prince Czartorinski, Lord Belhaven, and several other distinguished individuals.

The counsel for the Crown were the Lord Advocate, the Solicitor-General, Duncan Macneil and Robert Dundas, Esqs. — Agent, Adam Rolland, Esq. W. S.

For Mr. Stuart, Francis Jeffrey, James Moncrieff, Henry Cockburn, J. A. Murray, John Cunningham, Thomas Maitland, and William Gibson, Esqs. — Aeneas Macbean, Esq. W. S.

The instance being called, —

The LORD JUSTICE-CLERK, as the presiding Judge, thus addressed the Pannel:



# TRIAL OF MR. STUART.

—165—

JAMES STUART, pay attention to the Indictment against you at the instance of his Majesty's Advocate, now to be read.

The Indictment or Libel was then read over by the Clerk. Mr. Stuart standing up.

Lord JUSTICE-CLERK.—JAMES STUART, what do you say to this Indictment?—are you Guilty or Not Guilty?

Mr. STUART.—My Lord, I am not Guilty.

Mr. COCKBURN rose, and addressed the Court as follows:

MY LORD,—We do not intend to state any objection of a legal nature to the technical form of this indictment. It is drawn in rather a peculiar form, and contains statements and expressions which, we think, might have been spared with some respect to private feeling, and no detriment to public Justice. But still I am not aware that it is liable to any legal objections of a relevant kind; and I must add, that, even though it were, these objections would require to be of no ordinary description, before the Gentleman at the Bar would allow us to state them, or to throw any obstacles in the way of a complete and full investigation of the truth, for which it has been his only and most earnest desire, ever since the unfortunate affair which made such inquiry necessary.

But though we have no objection to the technical relevancy of the libel, this is one of those occasions, on which it is the duty of the pannel to avail himself of his well-known privilege, of beginning the business of the day by such a statement of facts, as may enable the Court to judge of the bearing and relevancy of his defences; and we think it the more necessary to give this statement, because this is a proceeding which involves considerations to the party far dearer to him than his life,—considerations which it is peculiarly necessary to bring forward now, because your Lordships know that there are a variety of accidents which, before he may ever have an opportunity of bringing them forward, may make the trial on the part of the Public Prosecutor break down.

This indictment sets out by stating, that Mr. Stuart had conceived malice and ill will against the late Sir Alexander Boswell, and that, under the operation of this passion, he had formed the unlawful design of challenging that gentleman. So far all is consistent, because having malice, assuming that to be the fact against this particular individual, it is at least a consistent supposition that he should have formed the unlawful design of challenging that man. But by a species of reasoning of which we cannot well comprehend the meaning on this side of the bar, the indictment goes on farther to state, that, having especial malice against that gentleman, and no malice against any body else, he not only formed the design of challenging Sir Alexander Boswell, but others of the lieges, and then apparently for the purpose of shewing that he was maliciously going about, in search of causes of a quarrel, the statement is that he repaired to Glasgow to obtain, through the medium of William Murray Borthwick, formerly one of the proprietors or printers of the newspaper GLASGOW SENTINEL, and then a prisoner in the jail of Glasgow, the manuscripts of sundry articles which had been published in the said newspaper and other papers and documents connected with said newspaper, which were then in the premises in Nelson Street of Glasgow, occupied by Robert Alexander, editor and proprietor of the said newspaper, and in the lawful possession and custody of the said Robt. Alexander; and the said Wm. Murray Borthwick having been liberated from jail, as arranged and concerted by or with you, and having on the 11th, or one or other of the days of the said month of March, carried, or caused to be carried a way from the said premises in Nelson Street of Glasgow, sundry writings the property, or in the lawful possession of the said Robert Alexander; and having brought, or caused to be brought, the said writings to the Tontine Inn or Hotel in Glasgow, where you then was, you did thereby obtain access to the said writings: and having found, or pretended to have found among them, some writings holograph of the said Sir Alexander Boswell, you did wickedly and maliciously challenge the said Sir Alexander Boswell to fight a duel with you: and a time and place of meeting having been concerted, you did, upon Tuesday the 26th day of March 1822, or upon one or other of the days of that month, or of February immediately preceding, or of April immediately following, upon the farm of Balberton, in the shire of Fife, a little to the northward of the road from the village of Auchtertool to the burgh of Kirkcaldy, and about three quarters of a mile or thereby distant from the said village of Auchtertool, in the said shire, wickedly and maliciously discharge at the said Sir Alexander Boswell a pistol loaded with ball, whereby the said Sir Alexander Boswell was mortally wounded, the ball having entered near the root of the neck on the right side, and shattered the collar bone, of which mortal wound the said Sir Alexander Boswell died in the course of the next day, and was thus murdered by you, the said James Stuart: And you, the said James Stuart, conscious of your guilt in the premises, did abscond and flee from justice."

Now, all these collateral and extraneous statements, apart from the mere fact of the duel between the parties, charged in the libel, are pointedly and most solemnly denied to be true. I do not merely say they are statements which cannot be proved by legal evidence. They are

statements of which there can be no moral evidence. If the light of Omniscience were let down on this affair, it would only show more distinctly, that the gentleman at the bar had no malice against Sir Alexander Boswell; that he did not seek the ground of a quarrel with him; that he was actuated by no conscious guilt in any thing that he did; that he did not abscond or flee from justice.

With respect to the other fact stated, which is the mere one of the duel, by which the death of the unfortunate gentleman, now no more, was caused, if I were permitted to speak the sentiments of my client and friend at the bar, I would freely admit that that gentleman met with his death at the hand of the prisoner. But I am not permitted to speak here those candid and generous sentiments which the person at the bar wishes to utter; and, therefore, acting as his counsel, though I do not anticipate that there can be the slightest doubt with respect to the fact on which this indictment mainly rests, we do not formally admit it. We call on the public prosecutor to prove it, and we do so chiefly in order that we may have the benefit of that extenuating evidence of which otherwise he might be deprived. Accordingly, I beg that, in what I am going to state henceforth, what I say as to the catastrophe of this affair, is always to be taken as an assumption, and not an admission. But, assuming the facts to be as assumed, this opens up the great question. Has the gentleman at the bar any legal apology for that effect of which he thus has been the cause? I say that he has; and I shall proceed to state the circumstances on which we undertake to shew, that he is not guilty of the crime set forth in the libel. But I cannot enter on this statement without most earnestly begging the protection of the Court, and the sympathy of the Jury, when I say, that I feel myself constrained to do this under two great disadvantages. In the first place, it is one of the unfortunate characters in this affair, that it is connected with topics of a public and party nature, which are most unfitted for the calm deliberations of a court of justice, and which can scarcely even be alluded to without exciting great prejudices and irritation. The other consideration is, if possible, of a far more painful and more delicate nature. It is another grievous misfortune in this case, and one which gentlemen of the bar feel more poignantly than any stranger can, that justice cannot be done to the living without seeming to trespass on those charities which are now due to the dead. I wish I could avoid this topic too, and that we could pass through the business of the day, without casting even a shade of doubt on the memory of one whose unfortunate loss has occasioned this discussion. I am afraid that we cannot. Sir Alexander Boswell was known to be gifted—a fatal gift when not combined with consequent prudence and the happiest temper—with great ironical powers; and I am sure I ask no more than what his best friends will claim for him, when I beg that every thing may be ascribed to this—that it may be attributed to that unfortunate propensity which all men have, to exert those peculiar powers on which they have staked either their reputation or their pleasure. Under these two difficulties which we have to encounter here let us see what are the real facts. And the first I shall state is one, for which I have the authority of all present for founding upon, that the gentleman at the bar is a man of unimpeachable character, and in the station of a gentleman. No man, who knows where the delicacies of this case lie, can fail to perceive the relevancy, in strict law, of what I now say. Now, though in this indictment the gentleman at the bar is unceremoniously styled "James Stuart," those who drew it might have known that he was directly connected by blood with some of the noblest and most ancient families in the land. He is a first cousin, once removed, of the family of Reay. He is very nearly connected—the precise degree is immaterial—with the noble families of Buchan, Melville, and Cardross, and several others of name. But I need go no farther on this part of the case than to say, that he is lineally descended from that great Nobleman who adorns the name and the house of Moray. Failing the family of the late Earl, the father of the gentleman at the bar would have inherited the fortune and honours of that illustrious house; and, accordingly, I perceive at this moment that he is supported, in his day of tribulation, by the present possessor of the honours and fortune of the house, who, though qualified by his rank to take another place in this Court, has this day waved the honour of a seat by your Lordships, and with great manliness and good faith, has rather preferred to sit at the bar with his relative and his friend. Nor is the personal character of the gentleman at the bar unworthy of these high and hereditary honours. This is a theme on which it is far better for the witnesses to speak upon than for me. But I may be permitted to say this, that if it fell to the lot of any person to be reduced to the necessity of proving his personal character, there is no man beyond these walls—aye, there is no man within these walls—who could by any possibility get a more beautiful character from a greater number of disinterested and spontaneous witnesses all picked out, or rather tendering their services, from the ranks even of his political adversaries, than will now, and have indeed already, clustered round the gentleman at the bar. I am not going to bring forward the public thanks this day which he has got again and again from the public bodies whose business he has done. But the special point of his character to which I would chiefly call your attention is, that he is distinguished by a

total absence from those propensities from which quarrels like this in general arise. If he has any quality more distinguishing than another, it is that of peacefulness; and your Lordships will hear it mentioned to-day, that on various occasions of a like nature to the present, on which his assistance has been got, he has been the certain and successful peacemaker; and that, if he is now charged with imbruing his hands in another's blood, he has more than once been the man who has prevented similar calamities under similar circumstances. Now, it is perhaps not unknown to some of your Lordships—it is sufficiently notorious to every body else, that in the beginning of January 1821, a newspaper was established in this city called the *BRACON*. With the general merits of that publication, either with respect to other subjects or other men we have nothing whatever to do. But on a particular occasion, almost exactly a year ago, that publication contained a gross personal attack on Mr. Stuart. The terms of that attack, the propriety of it, the meaning of it, I don't care about here; I rest at present on the mere fact, that he was attacked, and that that affair was settled between him and a person of the name of Stevenson, who he thought had provoked that insult. Now after that affair was over, sure am I that no stranger had a right to take up that quarrel—that no man, not a party to the business, particularly if living at a distance, had a right to adopt it, and treat the gentleman at the bar with insult. Sure, indeed, am I, that, with regard to Mr. Stuart, boasting, as he did, of the friendship, and walking every day arm in arm with the most respectable men in his neighbourhood, and mixing with the most eminent characters, nothing had occurred to make him a common butt, at which every person in the street was entitled to level his insult. Nevertheless, there appeared in that paper a series of other attacks, which I wish the deceased had never seen. I say this, because I shall show how he adopted them. But there did appear a series of attacks, couched in language which is a disgrace to our age, and has created heart-burnings and dissensions in a place formerly distinguished for the habits of kindness and good neighbourhood in which the people lived together. I am almost ashamed to mention the language of these attacks,—language for which, I confess to your Lordships, that till I was professionally employed to degrade myself, by seeing the words in which it appeared, I did not think there were to be found either printers or readers in this land. What I found is, that Mr. Stuart's name was directly cut at with the word dastard—with that of bully—sulky poltroon—coward—despised of the despising. He was thus placed in a most difficult situation. He reckoned these outrages as a mere provocation, given on the part of the same persons with whom he had been bound over to keep the peace. He therefore applied to the same Judge by whom this step had been taken, the Sheriff of Mid Lothian; and without having recourse to measures of personal revenge at all, he asked for protection, as will be sworn to by that respectable Judge this day, against these provocations to fight, by means of summary interdiction, or other punishment of the proceedings. But he was told that *no redress in that form could be got*—that, because these provocations to fight appeared in a public newspaper, as to which he was bound over not to retaliate, the Sheriff could do nothing—he would otherwise interfere with the liberty of the press. I am far from presuming to question the propriety of this learned person's judgment; but what was its effect upon Mr. Stuart? He was himself set up as a sort of target, at which every base libeller might shoot, and when he applies to legal authority for protection, the answer is,—Protect yourself; I will give you none; at least none of that summary protection, which, from its being summary, is the only one of which the case admits. He submitted to this—his most heavy judgment; and, for about a month or six weeks, he submitted in patience and in courage to slanders, which I would speak falsely if I said that he did not feel. He felt them to the quick, though no man but himself could have borne them with his patient courage. However, that and other similar events brought the career of that publication to a close, and now another great breach takes place in the history. That newspaper came to an end, and no continuation of it was set up in its place. A fair occasion was thus given for every human creature abstaining from touching Mr. Stuart. But, in spite of this most tempting opportunity to have done with this affair, a newspaper, called the *SENTINEL* was set up almost immediately in Glasgow,—in a different city, by different men under different auspices—men with whom Mr. Stuart had had no quarrel—no concern—no connection. And I find, in the very first number of this paper, all the previous calumnies against Mr. Stuart are purposely, deliberately adopted. In that very first number, I find applied to a gentleman, who has in his veins the purest and noblest blood in the country,—who at this moment was admitted to a society of as large a circle of friends as any man can boast of,—that he had dishonoured the blood and the name of his family. I find him accused by name of meanness, and called a heartless ruffian; and there is applied, not indirectly, but broadly, and without evasion, that intolerable word coward, which cannot be borne quietly without the loss of the character of a British gentleman. Mr. Stuart, though he had failed in the first application which he had made to the laws of his country, was not discouraged from making another. He was advised, not for the sake of paltry gain, but for the purpose of showing that he was resolved, to put down that low current of abuse of which we have seen the first fountain,

to raise an action of damages; and accordingly, before another number of the paper was published, he had the summons concluding for damages executed against the known editors of the paper. That summons came into the Court of Session. He gave in a condescendence, being the technical term in this country for the specification of facts complained of; and in the answers to that condescendence, he was plainly and openly in a court of justice twitted, because he had not fought. I say, he thus saw that even an appeal to the laws of his country was not to save him from renewed and aggravated insult; because, even when humbly meditating bare justice from a court of law, it was to be got only under those odious allusions which human nature must change before it can be brought to bear. This summons had not the effect of checking the continuation of these statements in the *SENTINEL*. They went on; and I am now obliged to come a little nearer to the deceased, by stating that they went on apparently with a keener spirit, and under an abler hand. Several articles appeared, of which the Jury will hereafter hear more particularly. Some of them are mentioned in the indictment. Who the author was we shall speak of immediately. But there appeared among others an article, entitled, "Whig Song;" a letter signed "Ignotus;" a paper beginning "Lieutenant James Stuart;" and one having the name of "Mark Tod." There were several others besides, but what we have to do with at present are these four already mentioned. At the period I have come to, Mr. Stuart did not know, nor had he any suspicion who the author of these articles was. He and every body else was satisfied that these articles were not the productions of common men, but that they came from some person who had not only that spirit which gives sarcasm its edge, but those powers which give it its lustre. Accordingly, every one of his acquaintances saw how deeply they had sunk into his heart; for in every one of these articles the word coward is directly applied to him. If any thing could add to the greatness of this injury, and its irreparableness, it would be certain other facts which about this time came to the knowledge of Mr. Stuart,—namely, that this newspaper, set up as it was in a provincial town, was not entirely left to the support of provincial men, but that it received the support of most honourable and respectable persons; which I state for no other purpose but that of showing, that greater injury was thereby done to Mr. Stuart,—because he was placed in that situation, that there was scarcely a house he could go into without the chance of having his eyes fixed upon a paper in which the word Coward was applied to him. At last, after suffering under those attacks for a considerable time, that unfortunate day arrived, in which the author of these calumnies was to be detected.—Papers were found in the office of the *SENTINEL*; and it is made part of the direct charge against Mr. Stuart in this indictment, though, whether by insinuation or not, we cannot very well understand on this side of the bar, that he got these papers improperly. Mr. Stuart, on a Saturday, was walking in the adjoining hall, bustling as usual with all its business, when a person came up to him, and got himself introduced as the private country agent of William Murray Borthwick, the editor or printer of the *SENTINEL*. This gentleman Mr. Stuart had never seen in his life before, scarcely ever since, and the statement made was just this:—"Borthwick is alarmed for his pecuniary safety; you have an action of damages against him; the Provost of Hamilton has two actions of damages, and others of the same kind are threatened. He wishes to do that which is always the right and duty of a printer to do, to serve himself by giving up the author." The answer made to this proposal, and this was by other two gentlemen, (a most material fact, for Mr. Stuart), was this, "We are ready to go to Glasgow to save farther time, and if you give us the documents, we shall do what is proposed,—we want the author,—we don't concern ourselves with the paltry printer." Mr. Stuart did not wish to go to Glasgow. The proposal indeed was, that one of the other two gentlemen should go. But they were prevented by accident, and he went himself to Glasgow, and got the documents in a little bag; but it is not ventured to be assumed, that Mr. Stuart knew that these documents were in the legal possession of Alexander. Therefore, on this point of the case, it appears that Mr. Stuart just did what any calumniated person would do, saying to the parties concerned, "I don't want your money, give me the author." He did what is usual in every case of stolen property, and which cannot be wrong in the stronger case of stolen character. Had he offered a reward of a thousand guineas for the author; nay, had he added, that if any person giving information no questions would be asked, he would only have been doing what any man of spirit would have done. And what I would ask would have been said if he had not adopted this course of conduct; if he had hesitated about taking it? I know it well. I have the authority of all the past and after numbers of this paper, which leave no doubt what construction would have been put upon his conduct. "You are the coward, the bully, the mean man, the heartless ruffian, the white feather, the man afraid of lead, the man afraid to draw a trigger, the poltroon we call you; you talk of your character, but you want a little money, because, when we put you in the way of getting honourable redress you betake yourself to your action of damages, and let the other alone." Mr. Stuart accordingly, took these papers, and it will be a



strange circumstance if he should be thought wrong in doing so, when I am ready to poll the bar, and shall not find one out of twenty who would not, both professionally and personally, say, that it was not merely his right, but his duty to take them. But I have a great deal more to say before leaving this point; for when I plead, that our defence on this matter is, that he did not know that Borthwick was not entitled to give up these papers, I am supposing that, in point of fact, Borthwick was not so entitled. But I now say that, on legal grounds, Borthwick was entitled to give up these papers—that all the force of law could not have prevented Borthwick doing this, if he chose. The fact on this point can be very clearly and speedily told. Borthwick and Alexander were printers and proprietors of this paper; but at a particular time, and before Mr. Stuart went for them, Alexander had proposed that Borthwick should go out of the concern. Borthwick agreed to this, but it was conditionally, and one of the conditions was, that a sum of money should be paid to him. On the faith of this future prospective condition, which ought to have been fulfilled within a limited time, Borthwick very foolishly signed the dissolution of the firm, and put it in the hands of Alexander; but Alexander, instead of waiting to fulfil the conditions, chose most illegally and immorally to publish the dissolution of the copartnership in the GAZETTE, and this in order to perform the trick of ousting his partner, yet keeping his money. On this Borthwick made an application to the Magistrates of Glasgow, praying that he might be reinstated in the paper, unless his money was paid; and the Magistrates pronounced a judgment in his favour. He went and resumed possession of his premises. He was in possession for a whole day. His associate in the office was Alexander, and no attempt to dislodge was made. To be sure Alexander, seeing that his partner, who was less disposed than himself to be rebellious, was thus reinstated in possession, had recourse to a manoeuvre to get him out of the office. On an old caption, and for a debt not due, he caused that man to be hurried to prison, and there he lay for eight days. Now, it was while he was thus in prison that the communication mentioned was made to Mr. Stuart; and Alexander having thus crippled his partner, and defeated the interlocutor of the Magistrates by his illegal violence, was not idle in the meantime. Borthwick had in the office his own repositories, desks, and drawers. All these it pleased Alexander to break open: on all of these he put new locks; for the purpose of making them sure of this, that when, by the operation of the law, Borthwick should be relieved from prison, he should not get in without having again recourse to the Magistrates. It was in this situation, when the legal rights of this man had been defeated by a piece of illegal violence, that Mr. Stuart found him when he came to Glasgow. But observe—I beg your Lordships will observe,—Mr. Stuart had no connection with Borthwick, directly or indirectly. He had no connection in the story which I have now been telling you. He had nothing to do but to deal with Borthwick as the apparent proprietor, and to take the papers; he did not, as the indictment says, liberate Borthwick from jail. Borthwick was liberated by payment of the £50 for which he had been imprisoned, but not one farthing came, directly or indirectly, from Mr. Stuart. It was paid by Borthwick's private agent, as a part of his general business, and Mr. Stuart had no more to do with it than the child unborn. Therefore, the second remark which I have to make is, that, if the property of Mr. Stuart's conduct depends on the fact of Borthwick's being entitled to do what he did, then his conduct was perfectly proper, for Borthwick was so entitled. But from that day till this, Mr. S. has felt the weight of the discoveries which he there made; for though I believe he would rather have given his life than made the discovery which he did against a gentleman with whom he was somewhat related,—with whom he had never been but upon good terms,—whose talents he had always admired: nevertheless, the melancholy truth was discovered, that his half friend, Sir Alexander Boswell, was the author of the worst calumnies against him. He discovered enough to make himself satisfied; and I shall have no reliance on evidence henceforth if the Jury are not satisfied by evidence, that Sir Alexander Boswell was the author of that "Whig Song," or the letter signed "Ignotus," and of two or three other productions, in every one of which, I do not say from malice,—I hope it was not from malice, but from the sportiveness of an idle fancy, he does apply the term coward to the name of Mr. Stuart, without ever having received a provocation, or the smallest pretext for doing it. Now, observe, that these were statements made by Sir Alexander Boswell against a gentleman who had formerly never written or spoken a word but in respect of him. I know it has been said, that Sir Alexander Boswell's conduct had some extenuation from his having been the object of a previous publication in a different newspaper by Mr. Stuart; but in that he was misinformed. Mr. Stuart is too much of a gentleman, and possesses too much mildness of character to be guilty of any anonymous publications against any individual. He never wrote one single word against or about Sir Alexander Boswell, or about any human being, dead or living. Mr. Stuart had now suffered such wrongs, as no man in this country ever before suffered. He found a letter from Sir Alexander Boswell, subscribing a sum of money to defend the SENTINEL; in other words, to defend that very defamation for which the SENTINEL was prosecuted; and then he found all his previous wrongs, and all levelled at his head, on the authority of no base

scribbler, but of a man, not quite his equal in family to be sure, but fully his equal in public station. What was—what could Mr. Stuart do after this? Was he to submit quietly? Was he not to speak? Was he to huddle up these papers, and go about the world with his diminished head marked with the word Coward on his brow? No—he did what, with the exception of the Bench, there is not a man in the kingdom who would not have done. He called in the advice of able and honourable men. Mr. Douglas, and the Earl of Rosslyn, with Sir Alexander Boswell, and Mr. Stuart, met,—and I pray the jury, as an act of simple justice, to observe what the terms were that were then offered to Sir Alexander. Why, if Mr. Stuart had been the bully and ruffian he was called, like a beast he would have rushed to the combat, and insisted that his wrongs should be wiped out with the blood of both, or one or other of them. There are men, and these are amiable and honourable men, too, who have been unquestionably hurried into this course. But Mr. Stuart, putting down, as he is thus proved most effectually to have done, the calumnies which had been launched against his temper and heart, was perfectly temperate and moderate: he who had suffered wrongs which made life intolerable, was yet willing to retain his life, and leave his antagonist the possession of his, with uninjured honour, by making two propositions, one of which it is my astonishment Sir Alexander Boswell did not accept. They had evidence of his accession to these calumnies, as being the author of them; and yet when they were shown, he was told, in the first place that if he would simply deny that they were his, his simple assertion would be taken as conclusive against all evidence whatever. He did not say they were not his,—I wish he could have said so. He distinctly admitted the authorship of that song, which we have chiefly selected for the sake of simplicity, as the ground to be taken up. Then the other proposal was made to him. Let us take it as a mere bad joke. Say but that you are sorry for it; that it was a squib, and that you had no serious intention of impeaching really the honour or courage of Mr. Stuart. That satisfaction he refused. He said, I cannot submit to be catechized. I will make neither denial nor apology. Now, was a meeting possibly to be avoided after this? On this matter we have the testimony of the Earl of Rosslyn and Mr. Douglas, who was chosen as his friend and peace-maker by Sir Alexander Boswell himself. These gentlemen will tell you, that they held a meeting to be absolutely inevitable. No legal, no moral force could prevent that catastrophe. But there is a third witness. Sir Alexander himself has left evidence behind him, which explains what he thought of this matter, and sorry am I to say that his character is so unequivocal. At the very time when he was writing these papers, his heart misgave,—he knew that he was doing what was rash, and might give offence; and, accordingly, he left orders, as we shall prove, at the newspaper office, that *they should immediately be destroyed*; and that, if any one wished to come to him for what he had written, demanding personal satisfaction, to give his name to him. What inference are we to draw from this proceeding, except that, in concocting and publishing these lampoons, he was aware that he was levelling shafts which must strike some person who might call him to account? It has been said that the calumny was not his. We shall endeavour, however, to prove that it was, nay, that he even went the extraordinary length of disguising his own hand, or getting a stranger hand, to write that libellous production, the offensive song which has already been mentioned. When Sir Alexander first heard of the discovery of these papers; or rather when he received a message from Lord Rosslyn, which merely said that he wished to see him, without mentioning either, why, or for what cause, at this very moment, on Tuesday the 21st of March, he wrote a letter to a gentleman of great respectability, a friend of his in London, Mr. Robert Maconochie, stating that he had received a message from the Earl of Rosslyn, he did not know what about, but he had no doubt it was about these squibs, and that whoever complained, he was determined to give a meeting; and his conscience went a step farther, for he added that he would do this, even though the requirer should be Mr. James Stuart; that is, before he knew, by any communication from Mr. Stuart, that he was speaking of him, or thinking about him, he was aware that he had given Mr. Stuart cause of offence, and accordingly prepared for that encounter which he knew to be inevitable. Not only so, but at the time of the interview which I have mentioned, and on going to the field, he very distinctly stated what virtually absolved Mr. Stuart from all blame, by saying, in plain terms, that he held the meeting to be the consequence of his own fault and to be altogether inevitable.

The affair being thus resolved upon, I am sure I need not state at any length its detail, or rather I need not mention details at all. This case is, and must be utterly devoid of those ingredients, which sometimes are to be found in cases of personal quarrels; every thing was and must have been done favourably. The character of the seconds is evidence conclusive to all the world, that, let what else be wrong, the duel was fair. I am sorry that I am obliged to add any thing at all about the views of Sir A. Boswell in approaching this fatal field; but I am bound to state, as I see it has been relied on in analogous cases, that Mr. Stuart saw his antagonist making preparations, which he was bound to interpret as of the most deadly character. In the letter which he wrote to

Mr. Maconochie, he expressly says, that the reasons why he wished to go to the Continent was, that he was about to do a deed for which the operation of the British law might be inconvenient. "If," says he, "I should be the successful shot, I should not like the after proceedings of our Courts of Justice." The resolution of fighting, and the consequence of this fighting fatally, was still adhered to when the intended scene of action was changed and it was resolved to fight in England, because it is proved that he again resolved to fight there, in order solely to avoid the subsequent operations of justice. And when at last he agreed to fight in his native land, he did so with no altered intention, but because he was advised by a legal friend, that he would be safer in the hands of the Lord Advocate who was a gentleman, than in those of an English Grand Jury. Whether this confidence was well placed—I trust it was—cannot now be known; but down to the very last, he never gave Mr. Stuart any reason to suppose but that he was preparing to do what would probably be a fatal deed. Accordingly Mr. Stuart took it so; he made his preparations for death; every thing was done that a man certain of never seeing another sun could do; and I am as certain as I am of my existence, that when he stepped from his carriage down to that field, he firmly believed he was stepping to his grave. An attempt, however, was made even on the field to settle this matter. Mr. Douglas asked his own friend Sir Alexander Boswell, immediately before the fatal preparations were made, if there was no possibility of yet settling this matter? The two propositions of either denying the papers—or the simple and honourable apology of the whole being a bad joke, were still open to him; but Sir Alexander Boswell shook his head, and said it was impossible. So the parties met, and I need state no more, except that they fired together, and Sir Alexander Boswell fell, and the contrast which was then exhibited in the conduct of this sulky poltroon—this bully—this ruffian, was to me one of the most striking and honourable features I have ever seen in moral character. He who had borne all these intolerable injuries with a degree of courage which is more heroic than braving present danger in the field; he who, during his personal danger, had behaved as if not a novice in such matters, now found himself unexpectedly the survivor, safe, and his antagonist at his feet, and he was instantly dissolved in all the tenderness of grief. He was hurried away from the field; I believe, of himself, he was incapable of moving from the spot. He came to Edinburgh; and even amidst the agitation of that moment, he did not forget what was due to his name. He left a message in the proper place here, which we really think might have saved the public prosecutor from saying, that after this fatal day he fled and absconded from justice. This was not a fleeing from justice. It was only a fleeing from those inconveniences to which suspected innocence is necessarily subjected; and, accordingly, from that day to this, he has been not only anxious for his trial, but he has been using every exertion to bring it on, to invite, to goad, to provoke the public prosecutor to bring it on. He went to London, and from thence to France, and we have the two gentlemen here this day, who will tell that they never witnessed so natural and so generous a flood of sorrow for the ties which he knew he had broken, for the life he knew he never could recall. That however cannot now be recalled; and the great question which your Lordships will this day have to ask is, Is the conclusion of this painful affair to be alleviated by a conviction of murder against Mr. Stuart? On the law of the case I have nothing to say, because it will come hereafter at a more proper time, and from an abler hand; but I may state in general, that I know that our law is rigid in its provisions for the preservation of life, but I know also, that it is liberal in its presumptions of innocence, and in its sympathy with the infirmities of our nature; and that all other maxims are levelled and humbled in this great one, that, by the law of Scotland, which is founded on the common sense of human nature, no man can be guilty whose mind is innocent. Is, then, the mind of the pannel innocent of crime on this occasion? I have one fact more to state in illustration of that, and it is one which really forms a conclusive and impressive termination to all the apologies I have stated for Mr. Stuart. Sir Alex. Boswell, in reference to this affair, consulted no less a person than a Supreme Criminal Judge, a Judge of this Court, that Judge, who, to his honor, is not here this day; and, in the letter which he writes to the brother of that Judge, he says, that, "on consulting him, his Lordship tells me I may depend on you." That is, a Supreme Criminal Judge prepared Sir Alexander Boswell for the meeting, by furnishing him with an opinion which admitted the propriety of acting so in his circumstances. If any man imagines that I state this to the disparagement of that excellent Judge he is mistaken; I say it to his honour, and I hope it is not disrespectful for me hypothetically to state a doubt if any other Judge in the country would have acted otherwise. It only proves that, in countries such as this, there is a necessity for combats of this kind; or rather, that such was the inevitableness of the combat in this case, that even a person best acquainted with the laws, one professionally in reverence for them, could not so far pluck his human nature from his breast as to say that it was wrong.

I know that, in the application of the law, it is held as being due to the deceased, and to the interest of society, that offences of this kind should be visited with some punishment. I assure you, however, my

Lords, that it is a sufficient check against the repetition of them, that the sufferer, before he engages in them, and ever afterwards, must be deeply punished in quarrel, and in the event; and I therefore conclude the whole by saying, that instead of adding to the sufferings of him who has already borne so much, and who, terminate as it may, is bound yet to suffer so much more, the only legal, the only moral, the only appropriate conclusion of this day's trial must be a conviction, that he acted under the operation of a great and resistless moral necessity, and that a verdict of not guilty is the close of this matter, which will give most satisfaction both to the law and to all reasonable men.

**THE SOLICITOR-GENERAL.**—As no argument had been urged against the relevancy of the indictment, he had no reply to make; but considered that the prisoner was fully entitled to the benefit of the able statement now concluded.

**LORD HERMAND.**—Mr. Cockburn's speech was for the consideration of the Jury.

**LORD GILLIES.**—No objection was stated to the relevancy of the libel. He had no doubt as to its relevancy; but as to the expressions used, charging Mr. Stuart with having formed the design of challenging "others of the lieges," besides Sir Alexander Boswell, he did not see with what propriety the Court could allow a proof of this charge.

Lords PITMILLY and SUCCOTH were of the same opinion, in which also the Lord Justice-Clerk coincided. And it was agreed accordingly that the words should be struck out of the indictment.

The following gentleman were then chosen as Jurymen, viz:—

Thomas Adieston of Carcant.  
William Pagan of Linburn.  
John Wanchope of Edmonstone.  
Sir Alex. Charles Maitland Gibson of Cliftonhall, Bart.  
Sir John Hope of Craighall, Bart.  
James Watson of Saughton.  
James Haig of Lochrin.  
John Thomson of Burnhouse.  
John Anderson of Whitburgh.  
Sir James Dalzell, Bart. of Bins.  
James Dundas of Dundas.  
David Brown, clothier in Edinburgh.  
Robert Paterson, ironmonger there.  
Thomas Macrithie, wine merchant in Leith.  
William Teifer, merchant there.

The Jury having been sworn, the indictment was again read over, and Mr. Stuart adhered to his former plea.

The Counsel for the Crown then proceeded to call witnesses in support of the case for the prosecution.

The Earl of Rosslyn was the first witness called. A conversation took place between the noble Earl and the Lord Justice Clerk, in which the presiding Judge communicated to his Lordship, that his evidence would be entirely free from the danger of implicating himself in any legal responsibility, on account of what he might that day state regarding the part which he had taken in the late melancholy event. His Lordship replied that he believed the laws extended to him that protection.

The Earl of ROSSLYN was then examined upon the Bench, and deposed as follows:—On the 25th of March, I saw Sir Alexander Boswell, in consequence of a note which I had written to him, stating to him that I came at the desire of Mr. Stuart. I also stated to him that Mr. Stuart had been in possession of certain papers, some of which appeared to be in Sir Alexander Boswell's handwriting; and having been sent by post, bore the post-mark of Manchinne, and the corresponding post mark of Glasgow. These papers were addressed to the Editor of the SENTINEL; some of which were the originals of papers published in that newspaper. One of them, particularly a song, contained matter most offensive, and most injurious to Mr. Stuart, charging him, in more passages than one, directly with cowardice. Among these papers was a letter from Sir Alexander Boswell to the Editor of the SENTINEL, containing some praise of the paper, and ordering it to be sent to him. The song, and other papers reflecting upon Mr. Stuart, appeared to be in the same handwriting with that letter which bore Sir Alexander's signature. The similarity of handwriting, together with the circumstance of the post mark of Manchinne, formed so strong a presumption that these papers had been sent by Sir Alexander, that Mr. Stuart thought himself entitled to ask Sir Alexander whether he was or was not the author, or had sent them to the newspaper. I stated, at the same time, that if Sir Alexander would say that he was not the author of those papers, or had not sent them, such denial on his part would be conclusive against any evidence. No person was present when this statement was made. Sir Alexander stated, that that was a subject of great delicacy, and he desired to have a friend present, to which I acceded as highly desirable. Sir A. then left me, and returned with Mr. Douglas as his friend. I then repeated to Sir A., in Mr. Douglas's presence what I had before said to Sir A. Sir Alexander and



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Mr. Douglas desired to confer together. I left them; and when called back, found Mr. Douglas alone. He stated to me, that he could not advise Sir Alexander to give any answer to the question; that Mr. Stuart was in possession of the facts, and the evidence upon which he relied, and must thereupon exercise his own judgment. He stated, that if this unfortunate business was to proceed any further, there were two conditions which Sir Alexander considered as indispensable; one, that no meeting could take place for fourteen days at least; because he had some family circumstances to arrange—the other, that if any meeting should take place, it should be upon the Continent. Upon these conditions I had no difficulty in saying, that I thought them likely to be approved of by Mr. Stuart. Mr. Douglas then called in Sir Alexander, who stated that he acknowledged the letter which bore his signature to have been his letter; and with respect to the other papers he declined giving any answer. I agreed to call upon Mr. Douglas at his own house shortly after. I did not exhibit the originals of the papers. The papers were the letter signed Sir A. Boswell, a Song, and a letter signed "Ignotus." These were the papers for which I was authorised to ask an explanation. I considered the song as of most importance, and upon which I chiefly relied, as it contained, in two different places, a direct imputation of cowardice.—The papers were now shewn to his Lordship, which he verified,—I saw Mr. Stuart, and proceeded immediately to Mr. Douglas, and stated, that I was grieved to find there was no alternative left to Mr. Stuart. That Mr. Stuart agreed to both the conditions stated by Mr. Douglas, viz. the delay of fourteen days, and that the meeting should be on the Continent. It was agreed that all subsequent arrangements with respect to the time and place of meeting on the Continent should be settled when we were assembled in London. I stated, or rather I asked Mr. Douglas, whether there would be no possibility of avoiding, by any means, the painful necessity of carrying this matter to extremity. I asked whether it was possible that Sir Alexander should treat the song as a very bad joke on his part, and one of which he was ashamed; declaring, at the same time, that he had no serious intention of reflecting upon Mr. Stuart's courage or character. The manner in which that proposition, so thrown out, was received, led me to understand that Mr. Douglas had no hope that Sir Alexander could say such thing. I left Mr. Douglas to go to Newhaven, meaning to return to Fife immediately, in the conviction that every thing relating to this subject was for the present finally arranged. The boat was delayed; and, before I embarked, I was overtaken by Mr. Douglas, who stated to me that Sir Alexander had taken the advice of a legal friend, and that he thought it no longer necessary to go to the Continent, and proposed to have the meeting in Scotland. I objected to that as highly inconvenient and embarrassing, in some respects, and as contrary to the agreement entered into between us. I stated, that from many circumstances, it would be highly desirable that our future arrangements should be settled in London, as we were agreed. I was still of opinion that we ought to adhere to the arrangement of going to the continent. I stated also, according to the advice I had given, Mr. Stuart might even set out for London before he could be informed of the change in Sir Alexander's intention. Mr. Douglas mentioned that we might meet at Berwick, and that the meeting might take place in Scotland. I objected. This was matter of some discussion, and Mr. Douglas returned to Edinburgh. I stated that I would not go back to Edinburgh, because I was persuaded that my return with him, coupled with our meetings in the morning, might excite observation. I then went away. All this took place between 11 and 4 o'clock. I had a meeting next day with Mr. James Brongham, when he stated to me that Sir Alexander Boswell and Mr. Stuart had been bound over in the course of the night, by the Sheriff of Edinburgh, to keep the peace within that county and city; and that, in consequence of that proceeding, it had been settled, during the night, that Sir Alexander and Mr. Stuart should meet at Auchtertool that morning, and desiring me to meet Mr. Stuart there, which I did. I went accordingly, and met Mr. Douglas, had some conversation, and we fixed upon a piece of ground in a field by the road side. Mr. Stuart and Sir Alexander arrived in carriages, and got out at the place we had fixed upon, (I believe about ten o'clock). The pistols were produced by Mr. Douglas and myself. Mr. Douglas sitting down, and I standing up. Mr. Douglas received from me the measured powder for each, and ball, and rammed them down. There were two pistols, of which Mr. Douglas took one, and I the other. The ground was measured at 12 very long paces. The pistols were delivered to the two parties by Mr. Douglas and me; and it was agreed they should fire together by a word. Mr. Douglas put upon me to give that word, which I did. They both fired, and Sir Alexander fell. Every possible assistance was afforded to Sir Alexander, who was surrounded by the medical assistants, Mr. Douglas, and myself, and I believe Mr. Brongham, who, during these transactions, had remained upon the hill, at a small distance, in charge of my horse. Mr. Stuart had advanced with great anxiety towards Sir Alexander, but, from his situation, and the necessary treatment from those about him, he did not speak to him, nor could he have any proper opportunity to do so. Upon examination of the wound, I was given to understand there was serious danger. I advised Mr. Stuart to go away. All the others remained, to give what assistance we could in removing Sir Alexander to Balmuto,

where it was judged advisable to carry him. No time was lost. Before any thing took place upon the ground, Mr. Stuart asked me if it was not proper for him to bow to Sir Alexander, and expressed his wish to do so. I answered, that I thought it perfectly right, and he advanced apparently for that purpose. Sir Alexander was then turned from him, and walking away; and I believe Mr. Stuart had not the opportunity of doing so (howing), but immediately after my attention was drawn away from Mr. Stuart to another object. Mr. Wood, Mr. Liston, Dr. Johnston of Kirkcaldy, and every person who was there, assisted in carrying Sir Alexander. Nothing material took place towards a settlement upon the ground. A wish certainly was expressed on Mr. Douglas's part, and on my own, but it was a mere wish, certainly without any hope on my part, that such arrangement could be made, and without any specific proposal. After what had passed in Mr. Douglas's room the day before when I had made the greatest possible advance, without success or hope, I considered the case as desperate.

Cross-examined by Mr. JEFFREY. I compared the signed letter with the handwriting of the other papers. With respect to the hand-writing of the song at first view there appeared to be some difference; it was in a hand that seemed to me to be in some degree intentionally disguised; but, after a strict examination of it, I was led to believe that it was written by the same person. I repeatedly pressed the observation, that we should consider Sir Alexander's word as completely conclusive against any presumption that had been raised by our examination of the evidence. I am aware of no punctilios that could have prevented Sir Alexander from answering the question in the negative; and would have answered the question myself, and would have so advised any friend, if he had known he was not the author. The hesitation to answer certainly impressed me with a presumption that Sir Alexander was the author. When at the meeting with Sir Alexander, I stated that the difficulty might be got over by his calling it a bad joke; Sir A. did not say that he was not the author. From the whole of Mr. Stuart's conduct throughout the proceeding, there was no feeling of personal ill will or resentment against Sir Alexander Boswell, but a deep sense of the unavoidable necessity of vindicating his own honour, more especially when it was assailed by a direct imputation of cowardice. I found him perfectly reasonable and tractable, and disposed to comply with my advice. I can have no difficulty in stating that Mr. Stuart's conduct, from the first communication of the papers to the 26th of March, was composed and temperate, and such as might be expected from a man of constancy and courage. His conduct on the field was consistent with the rest of his conduct. I desired him to present his side, and not his front. He said, I think I ought not to take an aim, in which I agreed. The parties were first asked, if they were ready, and the words were given, present, fire, as quick as possible. Mr. Stuart's pistol was pointed downward till the word was given. It was raised and presented almost instantaneously. There was a small difference of time between the two, and Sir A.'s pistol was the last. The sounds of the pistols followed closely—I cannot say whether Sir Alexander's pistol fired towards Mr. Stuart. I had no knowledge, intimation, or belief at that time, that Sir Alexander did not intend to fire at Mr. S. Had such an intimation been given to me, it would have amounted to a declaration on the part of Sir A. that it was not his intention to meet Mr. S. It would have been quite impossible that I could have been a party to any such proceeding. I have known Mr. S. for many years intimately. I had occasion to see him very frequently, both in public and in private society. I have no difficulty in saying, that in all my acquaintance with Mr. Stuart, I never knew a man less quarrelsome and more generally respected. He was much occupied in the public business of the county, and in improving his estate. He was not, to my knowledge, given to hunting, or any exercise that required the use of fire arms.

Mr. JOHN DOUGALL of Lockerby was acquainted with the late Sir A. Boswell, and recollected an interview between him and Lord Rosslyn, on the 25th of March, in the Waterloo Hotel. Lord Rosslyn held (he thought) two papers in his hand, and stated the circumstances which led to the belief that they were written by Sir A. Boswell; but if Sir A. would say that the papers were not his, nothing farther would be said; or if they were his, and he would say that he was sorry for it or that he did not mean any thing injurious to the character of Mr. Stuart, they would wish nothing more. Sir Alexander then answered, that any thing signed by him he would neither pretend to contradict or deny; but as to any thing unsigned, he begged not to be asked any questions. Mr. Douglas then detailed the circumstances which preceded the meeting, nearly to the same effect as Lord Rosslyn. On their way to the ground, Sir A. asked witness what advice he would give him as to firing. He said, Sir A. was the best judge himself, and should act on his own feelings. Sir A. replied, that he had no ill-will at Mr. Stuart; but he had, in an unhappy moment, rather injured him; that he had no wish to put his life in jeopardy, and that he intended to fire in the air. Witness expressed his approbation of this. He kept his eye more on Mr. Stuart than Sir Alexander, as he believed there was no chance of Mr. Stuart falling; Sir Alexander's determination being fixed. Observed Mr. S. raise his pistol, which he did

very steadily. Did not see precisely the direction of the pistol, but saw his arm raised, very firmly, and felt anxious for the fate of his friend. Observed Mr. Stuart fire, saw Sir Alexander fall. There was a difference in the time. There were two distinct pistols, following each other very quickly. Witness immediately ran up to Sir Alexander, and found him wounded and assisted by the Surgeons. After they examined the wound, they were afraid it was mortal, and witness advised Mr. Stuart to leave the ground. Sir A. spoke to witness at the time, and said he was afraid he had not made his fire in the air so decided as he could have wished. He was carried to Balmuto house to have his wounds dressed.

The LORD ADVOCATE wished to ask the witness, whether, supposing the papers had not been in the handwriting of Sir A. Boswell, he would have permitted any questions about them to be answered? Mr. Jeffrey objected to this question, and was proceeding to state his objection when Mr. Stuart, addressing the Court, said, he begged to wave all objection to any questions that might be put by the Counsel for the Crown, as he wished for the fullest investigation.

The question being repeated, the witness replied, that he would not have in that case permitted Sir A. to have been questioned on the subject.

Cross examined by Mr. CUNNINGHAM.—Witness understood Sir A. when he spoke of having imagined Mr. S. to allude to the squibs he had written against him, particularly the Whig song. When Sir A. Boswell called on witness, he had arrived only the day before from London. He told witness he had received a card from Lord Rosslyn, who wished to see him, and he said that he imagined that he was going to receive a challenge, and that he had no doubt it was from Mr. Stuart. That he had heard there had been papers seized connected with the GLASGOW SENTINEL; that he was afraid they might have got hold of some papers of his, and that there was a song of his which they might find their challenge upon. Sir A. Boswell repeated a stanza of the song. (*On being shown the song he said the stanza was in it.*) His object in coming to him was to ask him as his friend on the occasion. Sir Alexander assigned as his reason for fighting on the Continent, that if he should hit Mr. S. he would be safer from the laws of his country. Witness met Mr. Stuart at his house after his interview with Lord Rosslyn. Sir Alexander Boswell told witness that a legal friend of his had said, that his reason for changing Scotland for England or the Continent was, that he would rather be in the hands of the Lord Advocate of Scotland than a Grand Jury of England. This he (Mr. D.) mentioned to Mr. Stuart. On the journey between Edinburgh and Queensferry, a conversation took place in the carriage, in the presence of Dr. Wood. On its being considered whether there was any possibility of an amicable settlement, Sir A. said he felt convinced there was not; he did not know whether from an opinion that Mr. Stuart could do nothing else than fight, or whether from his own resolution; he rather thought the latter. Sir Alexander did not say what his intention was after firing in the air, but witness thought it was the best apology he could make. There was no communication of Sir Alexander's intention of firing in the air made to Lord Rosslyn or Mr. Stuart. Had a conversation with Dr. Wood on the matter, who advised him not to communicate such intention to the opposite parties, and in this opinion Sir Alexander coincided. Went up to Sir Alexander before firing, and told him to be sure and show that he fired in the air, or that he should fire into the bank, which was in the direction of the seconds. Mr. Stuart's conduct on this occasion was that of a man of honour and of courage. He had reason to know that Sir Alexander did not feel comfortable under the idea of an anonymous writer. He wrote a letter to the Editor of the Sentinel, saying, that if they were to prosecute, his name was not to be given up; but if they were to call upon him to account for it, his name was not to be kept back. From conversations witness had with Sir Alexander, he decidedly understood that he was the author of the song.

By the Court.—It was with witness's advice that Sir Alexander acknowledged the letter having his signature but declined answering any question as to those which were not signed.

Dr. GEORGE WOOD deposed to his having attended on the field at the request of Sir Alexander Boswell. Upon hearing the fire, Mr. Liston and he ran and found that the ball had entered the middle of the right clavicle. Two bones were extracted on the spot, the first by himself, and the second by Mr. Liston. His death was occasioned by the wound. Betwixt Edinburgh and Queensferry, Sir Alexander Boswell said, that Mr. Stuart, under all the circumstances of the case, could not do less than call him out.—Sir Alexander said, in the course of the journey, that he was determined to fire in the air. When he left the carriage he said, "Now, Gentlemen, I beg of you to remark, that it is my fixed determination to fire in the air." No person was present but Mr. Douglas and him when Sir Alexander made that observation.

Mr. A. BOSWELL, W. S. examined.—Had seen a great deal of the deceased's handwriting, and said the paper shown him without a signature was Sir Alexander's handwriting, but that to the best of his know-

ledge, that entitled "Whig Song" was not in Sir Alexander's handwriting. The letter signed "Ignotus" is not in the handwriting of Sir A. On comparing the address of the Whig song with that on the letter of "Ignotus," witness said he should call the latter Sir Alexander's handwriting, and the former not.

Mr. WALKER, tutor to Sir James Boswell.—Shown the Whig song, said it was extremely unlike any handwriting he ever saw of Sir Alexander's.

Cross examined by Mr. MURRAY.—The letter of "Ignotus" was the deceased's handwriting. The address was not so like as the body of the paper.

W. H. LIXARS, engraver.—Shown the letter signed Sir A. Boswell, and the Whig song; said that when he first saw them, he thought the writing was different in each; but when he saw them on Saturday, he felt inclined to alter his opinion. At the third page of the song, the similarity was particularly striking. At the beginning there seemed to be an attempt to disguise the handwriting; but towards the end that seemed to have been forgotten.

Mr. WM. SPALDING, writer, recollected in the month of March last going with Mr. Stuart to Glasgow. Mr. Henderson, writer in Hamilton, accompanied them. The object of their journey was to liberate Mr. Borthwick from prison. It was in consequence of a warrant from the Magistrates of Glasgow, reinstating Borthwick in the possession of his property in the SENTINEL office, that witness and Mr. Henderson desired him to go and take possession of that property. Before Mr. Borthwick's being liberated witness did not know that he meant to go to the Sentinel office. He knew of the judgment passed by the Magistrates in Borthwick's favour before he left Edinburgh. Knew of Borthwick's proceeding to the SENTINEL office next morning. He was employed two months before as agent for Mr. Borthwick. Never went to the jail, till he went to liberate Borthwick, which was his object in going to Glasgow. Came to Edinburgh, in consequence of Borthwick's confinement, with a bill of suspension, which he then resolved to present. Afterwards resolved, to prevent litigation, to consign the money directly in the hands of the jailor of Glasgow, for Borthwick's immediate liberation. No reason was assigned for liberating him at that moment, in place of waiting 48 hours, which would have been the consequence of proceeding by a bill of suspension. Mr. Borthwick had been in prison from the 1st of March. On the morning of Saturday, Mr. Stuart and Mr. Ayton called on witness, and urged him to get the bill of suspension presented. They assigned no reason at that time for the step, but he knew that Mr. Borthwick was to take possession of the SENTINEL office when he was liberated. Mr. Henderson, as Borthwick's agent, was introduced to Mr. Stuart, that he might be induced to drop an action of damages against Borthwick. Mr. Stuart replied, that if Mr. Borthwick would inform him of the names of any of the persons who wrote the articles respecting him in the SENTINEL he would afterwards consider whether he would suspend his action or not. Then, on Saturday, Mr. S. came to witness to urge him to present a bill of suspension. Mr. Stuart assigned no particular reason for this request except to liberate Mr. Borthwick. Nothing was said at that time of Borthwick taking possession of the SENTINEL office. Understood at that time they were going to Glasgow to consign the money to liberate Borthwick. Was not to contribute any part of that money. The next morning Mr. Borthwick went to the office, and sent certain MSS., by a man named London Robinson, to the Tontine Inn, where they were examined by Mr. Stuart, Mr. Henderson, and himself. Mr. Borthwick did not arrive until after the MSS. had been examined. Mr. Henderson knew Sir Alexander's handwriting, and all the papers written by Sir A. were laid apart from the rest. The MSS. now shown witness were those which were selected from the others. It was witness who gave up the MSS. to Mr. Stuart.

Cross examined by Mr. COCKBURN.—Did not recollect Mr. Stuart having solicited such MSS. from Mr. Borthwick. Witness knew Mr. Borthwick had been previously a partner in the printing office of Borthwick and Alexander. At the time that Borthwick was liberated, witness had not the least doubt that Borthwick had a right in the SENTINEL office. Never heard Mr. Henderson or Mr. Stuart express any doubts on the subject. From the information given by Mr. Henderson to Mr. Stuart, regarding the decision of the Magistrates in favour of Borthwick, witness is satisfied Mr. Stuart was impressed with the belief that Borthwick had a right. Does not recollect that he told Mr. Stuart that the judgment was final. Mr. Borthwick was imprisoned for a debt of £50, not justly due to keep him out of the SENTINEL office. That debt was paid by Mr. Henderson. Neither directly nor indirectly did any part of that money come from Mr. Stuart.

On their way to Glasgow, no mention was made of Sir A. Boswell's name, either by Mr. S. or Mr. H. It was not mentioned on Sunday in Mr. Stuart's presence, nor could have been mentioned till Monday that they found his letter among the MSS. Was present when Mr. S. saw Sir A.'s name. He did not expect it.



This closed the case for the prosecution.

The following witnesses were then called on the part of the defence:—

Mr. HENDERSON, writer in Hamilton; knows Mr. Borthwick. Had been employed as his agent. Witness came to Edinburgh on Tuesday the 5th March. He applied to Mr. Spalding, whom he had previously employed as Borthwick's agent, to present a bill of suspension. The bill was merely presented. It could not be granted without an answer. Witness therefore resolved to consign the money to the hands of the jailor, as the shortest way. Witness was to have advanced it himself; he knew the debt was unjust, and that there could be no risk. Witness afterwards applied to Mr. Spalding to introduce him to Mr. Stuart. His object was to get Mr. Stuart to forego an action of damages which he had brought against Borthwick, and for that purpose witness described the manner in which Borthwick had been imprisoned. Mr. Stuart replied that he could make no promises: That he was convinced Borthwick was not the author of what Mr. S. called the libels upon him; and asked if Borthwick would give up the authors. Witness said that Borthwick had often expressed his wish to be introduced to Mr. S. and his readiness to give up the authors, provided that he were freed from action of damages. Mr. Stuart and Mr. Spalding went along with witness to Glasgow. Nothing was said either on the way to Glasgow or before of Sir A. Boswell. Witness procured the liberation of Borthwick on the Sunday evening. Mr. Stuart was not present during the whole time of the interview; he went to bed. Borthwick, when liberated, went to the office, accompanied by witness's clerk, and one London Robinson (formerly a journeyman in his employ,) as witness. Robinson shortly afterwards returned with a bundle of what he called newspapers, but which proved to be the manuscripts of the *SENTINEL*. The handwriting of Sir Alexander Boswell was not discovered until all the handwritings had been assorted in different parcels. Mr. Stuart said, when he saw it, that he never expected it, and was quite astonished. Did not know Mr. Stuart previous to his introduction to him by Mr. Spalding, and never had any cash transactions with him.

Mr. JAMES GIBSON, W.S.—Mr. Stuart informed witness, on the 7th of March, that Borthwick offered to give up all the papers, if Mr. Stuart would agree to abandon the action against him for libels in the *SENTINEL*. Mr. Stuart positively refused to come to any understanding on the subject; but said he might show him the manuscripts, and then he would consider what was to be done. He expressed his opinion that some one should go to Glasgow instantly—pay Mr. Borthwick's debt, procure his liberation, and secure the papers. He said that he would much rather pay the debt himself than that they should lose the papers. Mr. Stuart and witness had many conversations about the libels. He had never once suspected Sir Alexander Boswell of being the author. Saw Stuart immediately after the duel in witness's own chambers, and anxiously asked him what had happened. Mr. Stuart ran to a corner of the room, covered his face with his hands, and after witness had repeatedly asked him the question, said, in a state of the greatest agitation, "I am afraid my antagonist is mortally wounded." After some time, witness asked him some particulars, which after compromising himself, he answered. He expressed a wish that he had missed Sir Alexander. He wished to God that he had taken aim, for then he should certainly have missed him, for he had never fired a pistol on foot before. Witness advised Mr. Stuart to leave the country, as his remaining would only subject him to unnecessary imprisonment. He himself positively refused to go, saying, that wherever he went he would be miserable, until he knew of Sir Alexander's fate; and that he could not go till he knew. Met Mr. Stuart afterwards at his own house and his last words to witness, were, "Remember to give notice that I am ready to stand trial." Next morning, witness accordingly gave a verbal notice to Mr. Sheriff Duff, at eleven o'clock.

Mr. LISTON, surgeon, accompanied Mr. Stuart on the morning of the 26th March. Mr. Stuart said he had no malice against Sir Alexander; he said, if he had the misfortune to hit him, he wished it might be in the great toe, as a gentleman in England did lately on a similar occasion. Mr. Stuart seemed to apprehend danger to himself. On the road to Auchtertool Mr. Stuart gave witness a memorandum, which he read as follows:—"If I am shot, I wish to be taken to Hillside. If my senses remain sound for my wife. I dislike to be overblooded." When witness went with him to Auchtertool he was quite cool.

Mr. THOMAS ALLAN, banker in Edinburgh, saw Mr. Stuart at Calais, and having explained the cause of his journey, was asked by him "Well, what news do you bring me?" He told him, knowing to what he alluded, that he was sorry to say the news were very bad for him,—on which he exclaimed, "then he is dead!" to this he replied, that such was the report in London the day he left it. On which Mr. Stuart burst into tears, and having remained greatly agitated for some time, he (Mr. A.) thought it right to endeavour to recall him a little, by representing to him how this unfortunate business had been forced upon, and how imperiously he had been called on to act as he did. "True," he answered, "but remember, oh remember his poor wife and his family." They remained

together for two or three weeks, during which time his mind seemed constantly to revert to the unfortunate subject, whenever conversation flagged, or when Mr. S. was left alone.

Mr. R. MACONCHIE.—Witness was well acquainted with the late Sir Alexander Boswell. (A letter from Sir Alexander to Mr. Maconchie was shown that gentleman, and he recognised it; he understood it was from Sir Alexander, and answered it to him.)

Dr. COVENTRY deposed that the letter signed Ignotus, that signed Mark Tod, and the song, were all of Sir A. Boswell's handwriting. Mr. C. D. Gardner gave evidence to the same effect. Mr. Sheriff Duff deposed as to the proceedings before him respecting the seizure of the *SENTINEL* papers, and the fray with Mr. Stevenson. George Bruce, messenger at arms, stated the facts as to summoning Mr. Stuart before the Sheriff.

Lord Kinneder, Dr. R. Barclay, Mr. Erskine of Cardross, Mr. Carnegie, Mr. F. Walker, Mr. Walter Cook, Mr. R. Mackenzie, and Mr. Hay Donaldson, gave evidence as to Mr. Stuart's character. All these gentlemen, who were mostly of opposite political opinions to Mr. Stuart bore testimony to the candour, amiableness and kindness of his disposition—to his mild temper, honourable conduct, and aversion to quarrels.

Mr. JEFFREY then said, that after what had been done, he thought they would be sufficiently justified in the eyes of the public and of his client, in saying, here they closed the case for the defence.

The LORD ADVOCATE had no doubt that, upon every view of this case, the gentlemen of the Jury would see the propriety of the prosecution which had been undertaken. It was the invariable rule, that where life had been taken, the circumstances of the case should become the subject of criminal investigation. The gentlemen of the Jury must occur with him in thinking, that, in a case like the present, such procedure was most desirable, when an individual, in the prime of life, father of a family, a distinguished Magistrate, and Vice-Lieutenant of a respectable county, whose talents and qualities had rendered him useful to his country, and esteemed by his friends, fell by such unhappy means. To the individual at the bar it was also an advantage, to trace the circumstances of the case, that the truth might be fully known, that false rumours might be repressed, and that he might be brought to justice, if guilty, or honourably acquitted if innocent. The indictment charges Mr. Stuart with the crime of deliberate murder, and fleeing from justice. For his own part, he felt disposed to regret those expressions; but it was the uniform practice, where the individual does not surrender himself, to employ such language. This is requisite, that a judicial examination might be undergone previous to trial. In the case of Mr. Stuart, no unnecessary delay had taken place, and no communication had been made to a foreign government to have him arrested at their instance. The charge of murder, according to law, had been proved by the Noble Lord and the Hon. Mr. Douglas. This is a fact which cannot be denied. His duty called on him to say, that the crime of murder had been thus proved; and the next question was, what defence had been set up in behalf of the prisoner? The law knew of no other ground of exculpation, unless a justification, founded on self-defence. But there are no such circumstances as to warrant this argument in the present case. Having thus stated the views which he entertained on the point of law, he would not enter at large into the detail of facts adduced in evidence, to show whether the individual was justified by circumstances or not. As all the defence had been fully and clearly laid before them; by it they were to judge and act, and, in forming their judgment in this way, they would be enabled to give such a verdict as would be alike satisfactory to their own consciences, and to the country at large.

Mr. JEFFREY rose and addressed the Jury. Whatever might be the issue of the trial, it was, and must ever be, a source of congratulation to his client. The prisoner deserves justice and expects it. He desires an exposition of the whole truth, for which the trial by jury, were it for nothing else, ought to be immortal. After the character given, and the evidence adduced on both sides, so harmoniously in favour of his character, there was no ground for alarm in rescuing him from the penalty of the law. The indictment set forth, that the prisoner, having conceived malice, did, for gratification of that passion, find and seek pretexts; and on a day mentioned, did, wickedly and maliciously, purpose and desire to take away the life of Sir Alexander Boswell. Against this charge he had pleaded not guilty; and while he admits that he was the unhappy instrument of his death, he had not been actuated by malice or rancour, but from motives totally unconnected with every such disposition; and instead of considering him as one guilty of a great crime, he ought rather to be viewed as one who had fallen under a great calamity. It was not necessary for him to prove, what all in the least acquainted with the British law and equity would admit, that the essence of all crime lay in the motive and intention. They had been told in general and comprehensive terms, that a duel for any cause is an irrational, barbarous, and pernicious practice, and that he who takes it upon him to send or accept of a challenge for any cause is guilty of murder. He did not mean absolutely to offer any apology for the practice in question. It is known by

those who are versed in history, that it has superseded the practice of private assassinations, and that we are not only indebted to it for the polish which it has given to the upper society of the community, but also for that courage and intrepidity, and diffusion of fairness, and handsomeness of demeanour, which distinguish civilized nations. However irrational and moral it may seem, it is a practice so established and enforced by custom, as to render it frequently inevitable; and such being the case, no individual man is responsible for the justice of the institution. Mr Jeffrey then proceeded to prove that several books of the strictest morality and religion have sanctioned it with their authority. Boswell, Dr. Johnson's biographer, states in several conversations which he held with the Doctor, that he considered duelling as a species of self-defence, or that it justified on the same grounds as public war. His biographer also coincides with him in these sentiments. Another author of equal eminence and morality, not only a professor of morals, but also a clergyman, trained in reverence of the precepts of religion, namely, the late Dr. Adam Ferguson, in his *Principles of Morals*, comes to the same result. And a late distinguished philosopher and lawyer, and a judge, who had adorned the Court in which they were now assembled, Lord Kames, in his *Sketches*, distinctly advocates the same opinions. The Learned Prosecutor had said, that in any case where one had the misfortune to kill his antagonist, there was necessarily an act of murder. But were an officer of high rank, who had been beat, and kicked, and spit upon, and reviled, and refused all apology, thus circumstanced, to give a challenge to his assailant, and were the result fatal, is it just or equitable that this man should be suspended on a gibbet as a murderer? Human nature does indeed revolt at such an idea. He did not wish to go into any discussion of the criminal law; but he would say, in general terms, that the criminal law did not consist, properly speaking, in the severe and impracticable cases which might be found in the record; nor even in the dicta of those high and stern magistrates of the land, who naturally attach much respect and reverence to that which they are bound to administer. But it consists in the scattered practice formed by verdicts of Juries, which were calculated to correct the barbarous and inapplicable severity of antiquated statutes. He did not say that juries had a dispensing power over the law; but when their verdicts go on in a uniform series, and point one way, they constitute law, and temper the severity of those statutes, which courts of law would too inflexibly enforce. That man may not kill another unless in self-defence, without incurring the crime of murder, is a new law, and contrary to the fact. It may be done in defence of personal property on a nocturnal assault; a soldier on sentry, or a constable to prevent a rescue, may justly kill. And if in such circumstances it is permissible—if one presents a pistol at the door of a post-chaise, and threatens my property, I am justified in killing him, although it should prove not to have been loaded;—if, on breaking into my house, I can lawfully shoot him, you place me in a painful dilemma, if, when a living outcast from society, exposed to daily insult, shrank from by ancient friends, met by the blushing of relations and tears of children, you shackle me thus, you deprive me of the only means to wipe away those stains, and to vindicate my fair character to the world. The analogy of law, the reason of the thing, and the feelings of all mankind, are against you. In the short reign of Henry IV. of France, about 4000 are calculated to have fallen in single combat; and in our own country, during one of the longest reigns, that of our late Sovereign George III. only about sixty or seventy are said to have fallen. Out of these there were only eighteen or twenty trials, and only two or three capital convictions—facts which show that the practice does not prevail to any such alarming extent. The Learned Counsel concluded a long argumentative speech, by dwelling emphatically on the favourable testimonials, both with respect to character and mildness of temper, which Mr. S. had received from so numerous and respectable a body of witnesses.

The LORD JUSTICE CLERK commenced his charge to the Jury at three o'clock. The Jury had paid such devoted attention to the evidence before them that the Lord Justice-Clerk considered it was not necessary for him to go over the details of it at any great length. It was his bounden duty to state to them what the law of Scotland was in relation to such unfortunate matters as had come before them that day. Sir George M'Kenzie lays it down as clear and decided law, that killing in a duel is murder;—he quotes several cases in support of this opinion. The next author to whom he would refer the Jury was Baron Hume, the standard authority of criminal law in Scotland, who completely coincided with Sir George M'Kenzie. Mr. Hume states, that in latter times some Juries had taken upon them to deliver verdicts of not guilty in such cases; but he clearly states that such decisions were not in conformity to the strict law of Scotland. Mr. Burner, also a valuable author, a man who was in considerable practice, and who had left behind him the treatise published since his death, expressed himself much to the same effect with the other authors. He refers, indeed, to some of the recent cases, in which the parties were acquitted, and considers the provocation as not to be altogether laid out the question. As these authors had referred to English authorities the Lord Justice-Clerk thought it right to read to them the opinion of the

first authority in England, Judge Foster, whose opinion had been confirmed by the law Judges of England. The law, therefore, on such matters, he considered to be quite settled. Then, as to the case before them, the indictment accuses Mr. Stuart of malice, and, with that feeling, of having gone to Glasgow to procure papers from Borthwick, and thereafter to challenge Sir Alexander Boswell. Now there was not even an attempt to substantiate this part of the indictment. On the contrary, it appeared that Mr. Stuart was utterly ignorant of who the author of the calumnies was before he saw the papers in Glasgow, and when the discovery was made, he expressed his utter astonishment. He could not therefore have gone to procure these papers under the feeling of malice or ill will to the unfortunate gentleman whose death had led to this discussion. The learned Judge quoted part of the evidence, which proved that Mr. Stuart was ignorant of Sir Alexander's being the author, until the papers were shown to him—until then he had not even suspected Sir Alexander. But the next question was, after having procured those papers, did Mr. Stuart premeditatedly and maliciously challenge and murder Sir Alexander? Now the Jury would consider the whole circumstances of the case. The alleged offensive articles of which the accused complained, and of which he had good cause to complain, were of an egregiously offensive nature. The evidence did not appear to warrant the conclusion that Mr. Stuart had used any improper means to get at these papers. The evidence, the clearest and most distinct he had ever heard in a Court of law, was before the Jury and by that they would perceive what had been the conduct and what the steps taken by Mr. Stuart. Mr. Stuart evinced no malice towards Sir Alexander throughout the whole course of the transaction. It was material that the Jury should also keep distinctly in view, the nature of the offers made by Mr. Stuart—they were two—either that Sir Alexander should disclaim being the author of these papers, or that he should state that he was sorry for having composed these satires, which he had not intended to hurt the character or wound the feelings of Mr. Stuart. Sir Alexander unfortunately would not consent to either of these proposals. The Jury would keep in view Mr. Stuart's conduct on the field, and his conduct after that fatal event—the contrition which he expressed for the fatal blow, and the total absence of all vindictive feelings on his part. In every case of this kind, where murder was charged, it was most material to consider the general character of the party accused—for that entered deeply into the case. Now, in the whole course of his practice he never had heard a stronger, more powerful, or convincing body of evidence in favour of any man's character, extracted too with great judgment, and great good taste, from persons opposed to the prisoner in politics. The Learned Judge begged it to be distinctly understood, that he, and he hoped no Judge would be friendly to such measures as these, or ever give their countenance to the crime of duelling. He lamented, that the public groaned under the lamentable licentiousness of the press; he hoped it would cease; it would receive no countenance from their Lordships. The Jury would weigh all these circumstances seriously in their minds; they would give a verdict consonant to the dictates of their own conscience, and, if in this case they were not enabled, to come to a decided and clear opinion, the advantage and privilege of that doubt belonged to the gentleman at the bar.

The Jury, without leaving the box, after a few minute's consultation, returned an unanimous verdict by their Chancellor, Sir John Hope, finding Mr. Stuart Not Guilty.

The LORD JUSTICE-CLERK then turning to Mr. Stuart, congratulated him on the favourable verdict of the Jury, and was sure, in the present state of Mr. Stuart's feelings, that it would be quite improper for him to add a single word farther.

Mr. Stuart was then congratulated by his Counsel and a great number of his friends.

The following are copies of the song and other papers published in the GLASGOW SENTINEL, and referred to in the foregoing trial:—

#### WHIG SONG,

Supposed to be written by one of the *James's*, certainly not by King James the I. or King James the V., but probably by one of the house of Stuart.

TUNE—*Sheriff Muir.*

THERE's some say that they're Whigs,  
And some say that we're Whigs,  
And some say there's nae Whigs aye, man,  
But as thing I'm sure,  
A pauky Whig do'er  
'S the Whig that out-whiggifies a' man,  
Chorus—And they crack and we tak,  
And they tak and we crack,  
And we tak and they crack awa', man.  
For conscience the auld Whigs  
Were sterlin, and bauld Whigs,  
And gied their oppressors a claw, man;  
But nou Whigs for siller,



# TRIAL OF MR. STUART.

—173—

(Their calf on the Piller.)

Ken nought about conscience ava, man,  
And they crack and we tak, &c.

The de'il took the lawyer,  
And left the poor sawyer,  
He was na a mouse to his paw, man;  
Oure straught was his mark, man,  
But a Whig Signet Clerk, man,  
Can ony thing, ony way thraw, man,  
And they crack and we tak, &c.

They rant about Freedom,  
But when ye hae feel'd 'em,  
Cry het or cry cauld, and they'll blaw, man;  
Tak him maist rampagant,  
And mak him King's agent,  
And hech! how his fury will fa', man!  
And they crack and we tak, &c.

There's stot-feeder Stuart,  
Kent for that fat cow—art,  
How elegly he kicks ony ba', man;  
And Gibson, lang chiel, man,  
Whase height might serve weell, man,  
To read his ain name on a wa', man.  
And they crack and we tak, &c.

Your knights o the pen, man,  
Are a' gentlemen, man,  
Ik body's a limb o' the law man;  
Tacks, bonds, precognitions,  
Bills, wills, and petitions,  
And ought but a trigger some draw, man.  
And they crack and we tak, &c.

Sae foul fa' backbiters,  
Wha rin'down sic writers,  
Wha fatten sae brave and sae braw, man;  
Ik Whiggish believer,  
Ik privileged riever,  
Come join in a hearty huzza, man.  
For they crack and we tak, &c.

Addressed on the back thus:—

For Mr. Alexander, Sentinel Office, Glasgow.

To the Editor of the Sentinel.

SIR,

Dumbarton, Dec. 17, 1821.

After the licence which we all have remarked, in the paper devoted to what are called the Whigs, and which, with becoming forbearance, was suffered to pass with impunity, I regret to see, by your paper, that the vindictive spirit of that party has been directed to an article in your paper, and that you are thereby invited to partake of that luxurious boon of the Legislature, a Jury Court Trial.

Much has been said about *personality*, but something may yet be said. If you had been base enough to pry into the *private life* of any private individual, and had dragged the result of unworthy research before the public, there are not words adequate to express the reprobation which such conduct must have merited. Of this, however, I need not say that I acquit you; for no one accuses you, and I feel confident that you are incapable of so reprehensible an act.

But while, by the concurrent admission of all men, those who press forward as public men, or notorious men, subject themselves to public animadversion, your error must be in the choice of your subject, and that may be serious or trivial.

You are prosecuted, it seems, by Mr. James Stuart of Dunearn, once, certainly, a private individual, but a man now known to us, because he has *bustled out of his element*. If, therefore, you had held up to public ridicule Mr. James Stuart, as an itinerant orator from county to county, and from meeting to meeting, who could have blamed you? Every public performer subjects himself to criticism—*orators* as well as *players*. Orator Hunt has had it; why should not Orator Stuart? Orator Hunt, after threatening to thrash the *lesser* man, Mr. Morley of the British Hotel showed in the cant language, the white feather, and refused to fight him, and was deservedly stigmatised and laughed at. If Mr. Stuart had done this, the parallel would have been perfect.

But, Sir, you are dragged before this purse-squeezing Jury Court, I am told, because, in reliance on the much advocated liberty of the press, and looking to the practice of the Whig papers, and particularly that pure jewel the SCOTSMAN you have ventured to repeat, what I am also told must have been well known to Mr. James Stuart, was as currently the topic of general conversation in Edinburgh as any subject which interests the many, either from its gravity or its absurdity. If I am not misinformed, and if utterance is publication, he might

have selected from coffeehouses or clubs, some individual whose *dimensions* might have been unobjectionable, (if other circumstances might also be equally so), and, on that chosen individual by judicious management, might have rubbed himself again into hilarity. But he has judged otherwise, and has selected you, Mr. SENTINEL, for his Whiggish vengeance, and summons you to lists where the winner gains no honour, and the loser, though he may lose much, may incur no disgrace. Beaten at their own weapons, like discomfited bullies, they are the first to call the watch; and, without inquiry as to provocation or who struck the first blow, he who struck the blow that is noticed must go before his worship.

I approve of the determined stand which you have made against Whig and radical tyranny over the press; and if, without injuring your proud spirit, I may express regret, I must lament the annoyance and expense to which you are subjected for that which did not originate with you, for having simply echoed the general talk. As you have stood boldly forward on loyal principles, I feel confident that this law suit will not damp your energies, that your own courage will bear you through, and that your cause will be supported by many a good friend, against the virulence of a party. I beg leave to offer as one stud for a sevenfold shield against Whig assaults, my hearty subscription of five pounds; and I shall be glad to hear that there is a goodly increase before awerk is over. —I am, Sir, your constant reader,

IGNOTUS.

Letter "To the Editor of the SENTINEL," dated 25th January 1822 signed MARK TOD.

(From the Glasgow Sentinel, Wednesday, January 30, 1822.)

SIR,—The Whig festival and Radical rally took place here last night, no less a person than "the conquering hero, Sir Ronald Ferguson, M. P. for Kirkcaldy, in the chair." They told me, that about 260 gentlemen sat down to dinner, but I presume they were counted near the watching hour of night, when two years are as good as four. Amongst the gentlemen, however, I remarked your peculiar friend, the magnanimous Mr. James Stuart, but it was not he who gave "The Liberty of the Press." The rest of the gentlemen were, in general, decently clothed; which, when I had time to observe it, dissipated the alarm and suspicion with which I pressed through the crowd, one hand on my watch chain and the other on my pocket, repenting most heartily of my idle curiosity.

The Gallant General, as they called him, first, very modestly expressed his inability to perform that duty which he had deliberately undertaken, or "to do justice to the situation in which he found himself placed;" but this unlucky discovery did not put him out of the Chair, or his speech; for in an extemporary oration, he recommended union to prevent ruin, but amongst whom I could not learn. A very shrewd dark-looking man significantly hinted, that it was a guarded allusion to united Scotsmen. Sir Ronald, however, concluded by giving very decently, without any wick or other indication, "The King." After a toast or two, "The Conquering Chairman" next proceeded to eulogise the public principles and private character of Mr. Fox; the latter at least, I thought rather ticklish ground, but the Whigs cheered and all was right for I am no connoisseur in whig morality; so "The memory of Charles James Fox" was ordered to be washed down in solemn silence: "Little said soonest mended," (thought I), and swallowed my wine. I forgot, however, to mention, that the Conquering General, not finding enough, I fancy, to say for the old dead Whig, jumbled in some devilish severe hits against the present Ministers, and told us that HE (the Conqueror) CONDEMNED THEM. So all is over with them.

The Gallant Conqueror next touched up Parliamentary representation pretty sharply, but made no allusion to Kirkcaldy, which you will admit was handsome on his part. He then gave, (and he spoke English like any Cockney who has lived in London all his life), "A fair, free, and FOOL representation in Parliament," and the fiddles struck up "Tullochgorum." The conquering General and Gallant Chairman concluded what he found to be his allotted portion of the toasts, by giving the health of one on whom the country should turn THEIR eyes in the hour of DANGER, "Earl Grey; and the waggish cat cut to mentors struck up the Pretender's song of "Charlie is my Darling." I thought this noble lord had become quiet; but after this hint we must keep a sharp eye upon him.

Down sat the Reviewing General, and up rose the reviewing Lord Rector, Mr. Jeffrey, who in more words than a less glib gentleman could have pressed into the service on such a subject, gave, "Sir Ronald Ferguson," and the band, as previously instructed, played, "The Conquering Hero!" The Conquering Hero returned unblushing thanks, and with a BATTLE-dore report, sent back the compliment by proposing the health of "Our Excellent Crompter, Mr. Jeffrey," (great applause.) The Crompter's crompt was in excellent motion, and he was up in a moment, and was all modesty and gratitude.

Then we had, in strange succession, toasts and speeches, and healths and memories, too many to remember, till the dull series was relieved by a speech from Mr. Crautoun, which I regret he did not deliver in Greek, as was originally intended. It would have been more appropriate Grecian liberty than a harangue upon

modern Greeks in a modern language. I don't think he alluded to the number of SLAVES in ancient Athens, but that perhaps was properly omitted; he concluded, by giving, for a toast, "The re-establishment of the independence of Greece:" this was most heroically received, but passed without a tune, as the fiddlers had no Greek music furnished,—ONE of them, who is celebrated for the faculty of punning with his fiddlestick, and who silly coupled Earl Grey with the Pretender, proposed to play the tallow chandler's song, "On melting day when grease is boiling," but it was deemed personal to several respected Whigs, and an extinguisher was put upon what Tom Moore calls "The light of the song."

Charles Fox's name and memory is a very convenient excuse for all subjects whatsoever; and as all Whigs are men of talent, we had, as one Doctor MacLagan, who sat near me, very aptly observed, a very copious discharge of oratory. My next neighbour, on the right, whom I suspected to be a weaver, from the manner he expressed his joy, by the alternate fling of either arm, and the successive kicks with either heel, assured me that there were three dozen of prime toasts given, and short and long, five dozen of speeches. Many of the toasts you will see in the papers. The army and navy were given, but not another FIGHTING man (unless you will allow the Director of Chancery, my Lord Rosslyn, who was remembered when the toast began to run dry,) until the gallant and "excellent Croupier, whom Lord Byron has celebrated for some bold exploit with Anacreon Moore, (the seconds, no doubt, singing the beautiful air of "Fly not yet") arose and gave the health of Mr. James Stuart! Mr. James acknowledged, in grateful terms, the honour which he had received from such a quarter. So now he has a feather to stick in his cap, to bear the other company.

Imagine my gratification to be seated at so small an expense, at an elegant dinner, amidst a galaxy of talent; and my mouth scarcely well closed upon my morsel of cheese, again wide expanded for a marceau of eloquence. After all, although I am no judge, I think these MEN OF TALENT very middling sort of bodies. It is not, perhaps, becoming in one such as me to doubt the assurances which we have from themselves. But if you could convince me that they may possibly be mistaken; and, if thus relieved from the weight of such authority, I am asked my opinion, why, I must give it honestly, and say that I never was present at such a scene of humbug, fulsome flattery, and foul vituperation, in the whole course of my life. Such an olio of vulgarity and impertinence, with an occasional pepper-corn of genius, I have never before been partaker of. Low must that party be sunk, that could not meet under more respectable auspices than Sir Ronald Ferguson; and where such a SET were permitted to be prominent. Talents! "behold there arose a talent of LEAD." There are a few men of common place genius among them; there are also a few smart men of literary SLANG. But droller fellows than the bulk of those who had the effrontery to presume to talk, must alone be sought for amidst the swamps of Old Batavia. I am, Sir, your obedient humble servant.

MARK TOD.

#### THE LATE LIEUTENANT JAMES STUART.

(From the Glasgow Sentinel, Wednesday, Feb. 20. 1822.)

To be dragged into a contest with any individual is an evil; but the evil is aggravated when the opponent is one not in the most blooming estimation. This we advance as a general principle. We now freely and ingenuously confess our errors in having repeated, in our columns, any thing regarding Mr. James Stuart; for had the gift of prophetic anticipation been ours, and could we have foreseen all that the gentleman has done for himself, we should have left his conduct to himself, as the more successful satirist.

This man of letters has printed a pamphlet, from which any one who will accept of it gratis may learn that James Stuart was actually enrolled as a fighting man, in the western troop of Fife-shire Yeomanry Cavalry. It appears that this heroic Lieutenant, contrary to a regimental order, called out the troop in which he serves, for a drill and jollification at the Stuart's arms. The commanding officer reported this violation of discipline to the Lord Lieutenant, who directed that he should be reprimanded in orders, and these orders to be read at the head of every troop. The Lieutenant rides straight from a drill, writes to the Commanding Officer, and tells him that his fingers are cold, (doubtless to convince him of the coolness with which he wrote,) and overwhelms him with compound misfortune; for he tenders his resignation, and warns him that he will no longer mount a trumpet. The resignation is immediately accepted so much for the Lieutenant himself; but the Trumpeter is not yet disposed of.

The magnanimous yeoman has a threefold defence. The Captain's sickness, his own ignorance, and his exemplary conduct on the day libelled; for he states—and we believe him—that he was the last man to retreat from the Stuart's arms. Brother Macculloch is a political econo-

mist, and we understand has two pupils, and he will bear us out in the assertion that every thing will find its own level. To raise the value of any thing by any act is hopeless. Hence the attempt of Lord Rector Jeffrey to give a lift to Mr. James Stuart at the Fox dinner, was defeated by the laws of gravity? he might with equal success have exerted his puissant powers to lift the celebrated fat ox of Dunearn.

We noticed Mr. James Stuart as an active, every-where-busy, bustling Whig;—as a publicised character who courted notice. It was under error that we noticed him at all, and we repeat our avowal of regret.

Copy Letter—Sir Alexander Boswell, Bart. to Robert Maconochie, Esq.  
MY DEAR MACNOCHIE, Edinburgh, 24th March 1822.

I receive your very kind note; but I was so worn out, and just setting out, that I could not come to see you, and it was too late to appoint you to come to me.

I must now address you on a subject of a delicate nature, which I do from a confidence in your friendship.

About ten days ago Mr. Stuart of Dunearn went to Glasgow, and by the instrumentality of a certain person, one formerly a partner in the CLYDESDALE JOURNAL, (now the SENTINEL,) broke open the Editor's desk, and carried off his papers, and, I understand, amongst others, some squibs in my handwriting. Last night, on my arrival, I received a letter from Rosslyn, that he wished me to appoint an hour as early as possible, that he might make a communication to me; this, I suppose, is in reference to some of these squibs. I do not know who the offended party may be; but even if it should be Mr. James Stuart himself I shall give him a meeting. In order, however, to obviate many of those circumstances which follow such transactions, I mean that the meeting shall take place on the Continent,—say Calais, and I wish to put your friendship so far to the test, as to request you to be my friend on this occasion. I saw your brother this morning,—and his Lordship seemed to think that you would acquiesce. If I had deemed it expedient to meet my man here, John Douglas would have gone out with me; but if I should be the successful shot, I should not like the after proceedings of our courts of law, and therefore wish to pass beyond their jurisdiction. I know nothing of particulars yet, but write in prudent anticipation, and shall write again so soon as I know them.

I know this is perhaps the greatest favour that can be asked of any man; but, by this arrangement, you will be implicated in less trouble, and you won't mind a trip to France. If my wish is acceded to, I would propose the meeting to take place about fifteen days hence, as I wish to make a slight arrangement respecting my state, and legalise it by going to kirk and market, so that you may write on receipt of this, and if I must go sooner than I can receive yours it is only a letter thrown away. I am Dear Maconochie, yours very faithfully,

(Signed) ALEXANDER BOSWELL.

#### Stanzas.

On planting a Bay tree at the grave of Churchill.\*

'Above the bard's neglected grave  
We plant thee, honouring bay!...  
Here verdantly thy boughs shall wave  
Triumphant o'er decay.  
Fit emblem of the fadeless fame  
Which, like thy living wreath,  
The Muse has twined around the name  
Of him who sleeps beneath.

We plant thee in no pomp of grief  
To add one shade to gloom;  
Then freshly spring, unwithering leaf,  
And grace the poet's tomb;  
Where friendship soon may cease to mourn,  
Soon love forget to weep,  
Yet fame shall o'er her favourite's urn  
Unwearied vigils keep.

We plant thee not for him whose lips  
Are hush'd—whose heart is cold—  
The spirit wrapped in death's eclipse  
Heeds not its mortal mould!  
But thou, here flourishing alone,  
Mayest guide the wandering eyes  
Of him who seeks the lowly stone  
Which tells "Here Churchill lies!"

\* A plain stone, in a ruinous church-yard at Dover, with this simple inscription—"Life to the last enjoyed, Here Churchill lies!" points out the spot where the remains of this celebrated writer are deposited.



# ASIATIC DEPARTMENT.

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## Sixth Editor of John Bull.

We are happy to see at length, that the System hitherto observed in the JOHN BULL, as well by its Editors as Correspondents, is formally abandoned; and that the force of public opinion has been sufficiently felt to induce a public and solemn pledge of abstaining in future from what has so invariably distinguished the BULL from every other Paper in India, during the past. No one will presume to deny, we imagine, that it has been especially devoted to personal and private allusions and calumnies directed against the history and moral character of the Editor of the JOURNAL, as well as against his principles.—It is never too late to reform: and therefore, letting the sins of the past rest on the heads of those who were accessory to them, we shall consider the present Editor as beginning an entirely new career—and whenever we may even allude to the past character of his Print, we desire to be distinctly understood as not including him in our censures.

The following are the paragraphs which appeared in the JOHN BULL of Monday and yesterday, from the Sixth Editor's pen;—which we re-print, that they may stand on record as a pledge, solemnly and voluntarily made, and therefore no doubt sincerely intended to be acted on:—

"With every disposition to pay attention to the wishes of those who may henceforth honor us with their Correspondence, we are desirous of having it distinctly understood, that however determined and constant our opposition may be to the principles and views usually advocated in the CALCUTTA JOURNAL, still that opposition is confined to the principles and views alone—and therefore we are not disposed to admit any personal allusions which can possibly be separated from a legitimate exposure of what we consider reprehensible in the public matter of the CALCUTTA JOURNAL or any other Paper."

"We desire never again to have occasion to notice personally the Editor of the JOURNAL—nor would we do it now but that we feel it our duty to exonerate the Proprietors from the charge of exercising any influence over the responsible Conductor of the Paper."

"We take this opportunity of assuring the Editor of the JOURNAL that no personal feeling can ever enter into the opposition which we may feel it our duty to make to the principles inculcated in his Paper, and giving him credit for sincerity in those principles we merely hope to meet the same in return."

We respond to these pledges in the same friendly spirit in which they appear to be written. With us, there is no need of change in this respect. We have never once alluded to any part of our Opponents' conduct, which did not strictly belong to their public duties: and to this, we shall still strictly adhere. Strenuous as we have uniformly been for the free exercise of that opinion, which we think every Briton has a right to express on public men and public measures, as well as on the principles and doctrines maintained by them, we should be the last to deny the same exercise of that right to others. Instead of shrinking from public scrutiny, we have always shewn that we consider its controul to be salutary, and accordingly invite investigation into all our public professions and public principles, whenever they may be given to the world. We freely concede this privilege to every man who feels disposed to exercise it, and we only ask the same reciprocal interchange of sentiment, convinced as we are that in the collision of argument and opinion, Truth must always ultimately prevail.

But to close at once—(and as we could wish for ever)—all reference to the recent Controversy between the two Papers, we give here explicit answers to the last charges advanced; and shall then rest satisfied with having done our duty, and leave it to the candour of our Contemporary to perform his.

1st.—With regard to the abdication or resignation of the Fourth Editor, it cannot be denied that he quitted the charge of it after three or four days only—and that this could not have taken place if he had been satisfied with the conditions of his service. We repeated only the general and uncontradicted belief that dissatisfaction with these conditions was the cause of his resignation; and we believe so still, nor shall we be likely to alter

our opinion until the anonymous writer offers to the world the real and attested history of the secession alluded to, and publishes the proofs which he says he can produce. An anonymous writer's assertion that he is prepared to prove any thing, can be of no weight whatever; when the proofs appear, we shall then be satisfied.

2nd.—As regards the Proprietors of the Paper,—we can only say that if there be no other feeling among them, than a desire to oppose the principles of the CALCUTTA JOURNAL, without a wish to see its Editor stigmatized and brought into disrepute, then it was their duty to have expressed their public as well as private reprobation of the base calumnies that have been circulated through their Paper; and we believe that the community in general will never cease to believe that there are among the Proprietors some at least who are personally inimical to the Editor of the JOURNAL, as long as they remain silent spectators of the calumnies against him of which their Paper has been made the repeated channel.

3rd.—Regarding the change of Editors, and the absence of accurate information as to who superintended the Publication on the day that the Letter signed "A FRIEND OF MR. BANKES" appeared, we have to say, that on the "evening" of Saturday we were first made acquainted with the fact of its having had an Editor on the day alluded to; but we did not receive this information until the Extra Sheet distributed on that same evening was printed off: and that in a matter so deeply affecting our reputation, we could admit of no delay. The Monday's JOURNAL being always printed on Saturday evening also, and sent to press without allusion to the subject, advantage was taken of the earliest publication succeeding it, namely, Tuesday, to state distinctly, that the Number containing the calumny which had so justly roused our indignation was issued while the Paper was under the superintendence or charge of the original Editor, forming the Fifth in the order of succession, and that this Number contained three such Letters, as we hardly ever remembered to have seen together in the pages of that Paper, even in its worst and most violent days. To this succeeded the Sixth Editor, whose pledge we have so readily received and give credit to, so that the Public are now fully and distinctly informed, as fully at least as we can inform them, of the several changes, and several responsibilities for the past, from which they will never wholly exonerate the Proprietors till they publicly avow their disapprobation and even regret at what has transpired.

But we have now only to do with the present Editor and his public capacity and public conduct; and accordingly, we repeat to him the reciprocal interchange of assurance, that we shall be perfectly satisfied as long as the Correspondence of the JOHN BULL is regulated by the same standard as he has established for his own conduct; and we trust the Public will never forget the solemnity of the pledge, nor fail to visit as it may deserve the very first breach of so salutary a rule.

We have shewn the new Editor a proof of our own confidence by sending him a Copy of the Public Letter furnished to the JOURNAL for publication by the very Medical Officer to whom it was addressed, in order that he may contradict in his own pages, the assertion of one of his Contributors calling himself "ANTI-CRIB," that we "FILCHED" this Letter from its columns without acknowledgement; whereas the whole subject having originated in the JOURNAL, the Public Letter was expressly sent for publication in its pages, by the very Officer to whom it was addressed by order of Government.

We shall be glad indeed to see this species of warfare cease. Let us each maintain zealously and honorably the principles and opinions which he conscientiously believes to be right, and let the suffrages of the Public determine to which of these their encouragement and support are most justly due. We have always considered our cause to be in their hands; and we have found then at once so just and generous, that we never desire other Arbiters of our Fate. Let Public Opinion be only freely expressed, and we have no fears for the result of its powerful influence.

**Public Assemblies.**

The second of the Public Assemblies which takes place this evening at the Town Hall, will no doubt, be more fully attended than the first. The weather is still more favourable for Dancing than on that occasion;—those absent from Town during the Holidays have principally returned;—and the last not least, we hear that the Marquis and Marchioness of Hastings intend honoring the Ball Room with their presence on this occasion. Tho' often repeated, there is still room to repeat once more that an early attendance (as the Summons will be given precisely at 12 for Supper) is the only way of ensuring a long evening to admit of the full enjoyment of the Dance.

**King of Oude.**

We have authority to state that on the announcement of Monsieur Savignac's intentions of engraving a Portrait of the Marquis of Hastings, from the splendid Picture of George Chinnery, Esq. in the Military Library at Dum Dum, the King of Oude immediately dispatched an order from Lucknow, (through the Resident) for one hundred copies at a Gold Mohur each. This will be considered, no doubt, as a munificent specimen of patronage extended to the Fine Arts, more particularly when it is added, that His Majesty is so little versed in the details of Engraving, that he urgently requested his 100 copies might be finished before any others were begun upon—and sent off to him without delay.

**Death of Mr. Felix Carey.**

On Sunday, the 10th instant, died at Serampore, Felix Carey, Esq. eldest son of the Reverend Doctor Carey, aged 26 years. The death of this individual will be considered as a great loss by those who are labouring in the intellectual and moral cultivation of India. He was the author of the following works:

A Burman Grammar.—A Burman Dictionary in Manuscript.—Part of the Burman New Testament.—A Palse Grammar with a Sungkrit Translation, nearly finished at Press.—Vidyahara-Vulee, in Bengalee, a work on Anatomy, being the first volume of a Bengalee Encyclopedia, in octavo, with plates.—A large Bengalee Dictionary in the Press, edited by Mr. Carey and Shree Ram Komul Sen.—A work on Law in Bengalee, not finished at Press.—Translation into Bengalee of an Abridgement of Goldsmith's History of England printed at the Serampore Press for the School Book Society.—The Pilgrim's Progress translated into the Bengalee, and printed at Serampore.—Translation into the Bengalee of a Chemical Work, by the Revd. John Mack, for the Students of Serampore College. The work is partly brought through the press.—Translation into Bengalee of an Abridgement of Mill's History of British India, for the School Book Society now in the press.

He had also for some years been assisting his venerable parent in various Biblical Translations; for which he was peculiarly qualified, as he came out with his father to India when quite a boy, and was undoubtedly the best Bengalee Scholar among his countrymen, especially in his knowledge of the idioms and construction of that language. In the midst of all these engagements for the good of India, and in the prime of life, he was cut off and carried from the bosom of an affectionate family into eternity:—"How unsearchable are His judgements, and His ways past finding out."

**Births.**

At Midaapore, on the 9th instant, at the house of Lieutenant Colonel G. RICHARD, the Lady of W. BLUNT, Esq. of the Civil Service, of a Daughter.

On the 5th instant, Mrs. R. GEORGE, of a Son.

At Hyderabad, on the 16th ultimo, the Lady of Lieutenant HOLROYD, Commanding the Resident's Escort, of a Son.

At Vizagapatam, the Wife of RAJASTREE GODAY SOORIA PRACASA RAO, a respectable Native, of a Son and Heir.

**An Historic Sketch.**

To the Editor of the Journal.

SIR,

It is related in the Tauric History, that when a certain King was dethroned, and a Prince of the Demonic dynasty usurped the throne and slandered the deposed Monarch, His Ex-Majesty is said to have exclaimed in the words of Shakespear.

"He who steals the BULL, steals trash,  
'Twas mine; 'tis his, it may be any body's,  
But he who fleches from me my good name,  
Robs me of that which not enriches him;  
And makes me poor indeed." Q

**Selections.**

Bombay, Wednesday, October 23, 1822.—In the absence of news from England we have had recourse to the labours of our Brother Editors at the other Presidencies, selecting the most interesting articles contained in the papers of the week.

We learn from Kairah, that considerable damage has been done in the lower part of the Zibah by the Seere's bursting its banks, but are happy to add, that in most other places of it notwithstanding the severity of the late mounsoon, the crops have not suffered, and there is every prospect of an abundant harvest.

The free trader Roscoe, Captain Morrison, for Liverpool, will sail we understand, to-morrow.—*Bombay Gazette.*

**Laudable Societies.**—We understand from a respectable house of Agency that the Directors of the Laudable Societies have elected Dr. Mellis as Medical Adviser and Examiner for these Institutions in succession to Dr. McWhirter, who has resigned in consequence of his approaching departure for England.

**Physician.**—Dr. Shuter of the Madras Establishment is appointed Physician.

**Tabreez.**—Advices have reached Town from Tabreez as late as the 11th of August, which state that the Turkish Army under Mahomed Pasha, said by the Persian accounts have announced to 60,000 men, had sustained a complete defeat from the Prince Royal of Persia, with the loss of all its Artillery. No particulars have yet come to our knowledge, but we shall use every exertion to obtain information and shall hasten to lay it before our readers. The success of the Persian Arms is mainly ascribed to the superiority of their Artillery. The Cholera continues to make dreadful ravages in Persia.

**Imaum of Muscat.**—A report has reached us, which we believe rests on good authority, and which we earnestly hope may prove true, that an engagement has been concluded between Captain Moresby of H. M. S. the MENAI on the part of the Governor of the Mauritius, and the Imaum of Muscat, by which the latter agrees to prohibit entirely the Sale of Slaves from his Dominions to all Christian Nations, and promises to confiscate all Ships with their cargoes which may be found on his Coasts engaged in that traffic. Our information further states that the Imaum has agreed that all Vessels under his Flag having Slaves on board for sale to Christian Nations, and found beyond a line drawn from Cape Delgado the most Southern point of his African possessions, and passing sixty miles to the South of the Island of Socotra to Diu Head, shall be liable to be treated according to the Provisions of the British Law. Our readers are aware of the eagerness and activity with which this traffic has been pursued by the French Merchants of Bourbon assisted by Funds and support from the Mother Country, and of the exertions of Governor Farquhar and the British Naval Officers to suppress it. Of late the Trade has been chiefly maintained by the facilities afforded it at Zyoorgebar, a possession of the Imaum of Muscat on the Coast of Africa; from whence large supplies of Slaves are annually drawn to the Imaum's Asiatic Territories and to the dominions of other Mahometan States. His Highness is understood to have promptly complied with the suggestions of the British Government to adopt measures for preventing the European slave Merchants from resorting thither, and it is to be hoped that the measure accomplished by Capt. Moresby, whose meritorious and unremitting exertions against the Slave Traders have already been so conspicuous, will be the means of effectually cutting off this almost only remaining source of a traffic so pregnant with human misery.

The assent of the Imaum, who will sustain a considerable loss of revenue and to whose Religion and Laws, Slavery and Slave trading are not repugnant, is a proof at once of his liberal and enlightened understanding, and of the influence the English Government, as well as of its beneficial direction; It would be well if some Christian Sovereigns would take example by his conduct.—*John Bull.*